



New Act on Waste and Contaminated Land

Act 7/2022 (the “AWCL”) aims to encourage the circular economy by reviewing the existing rules on waste and contaminated land.

Legal flash

April 2022



Main new developments

- Restrictions on certain single-use plastic products
- Review of the framework regulating extended producer responsibility for waste
- Tax measures: special tax on non-reusable plastic packaging and tax on landfill, incineration and co-incineration of waste
- Creation of a State Inventory of Voluntary Decontamination of Contaminated Land
- Review and update of the inspection and penalty system



General aspects and enforcement

- **Transposition of EU Directives:** The AWCL transposes into Spanish law Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (“*Directive (EU) 2018/851*”), and Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019, on the reduction of the impact of certain plastic products on the environment (the “*Directive on single-use plastics*”).
- **Repeal:** The AWCL explicitly repeals *Act 22/2011, on Waste and Contaminated Land*, and *Royal Decree 838/1988*, approving the regulation to implement Fundamental Act 20/1986, on Toxic and Hazardous Waste.
- **Entry into force:** The new AWCL entered into force on April 10, 2022, except Title VII (“*Tax measures to encourage the circular economy*”), which will enter into force on January 1, 2023.

Restrictions on single-use plastics

- **Reduction targets:** The AWCL sets a target to reduce in weight the consumption of certain single-use plastic products (such as disposable cups and lids, and food containers) by 50% by 2026, and 70% by 2030 compared to 2022, with all subjects involved in marketing these products being obliged to encourage the use of reusable alternatives and of other non-plastic materials. Also, from January 1, 2023, consumers will be charged for each of the plastic products listed in Annex IV.A, with the price being shown separately in the receipt.
- **Bans:** The AWCL bans the placement on the market of certain single-use plastic products listed in Annex IV.B (such as plates, cutlery, straws, and some types of cotton swabs), of products made with oxo-degradable plastic and products containing intentionally added plastic microbeads.
- **Design and marking requirements:** It imposes design requirements on plastic beverage bottles. It also lays down marking requirements on certain single-use plastic products listed in Annex IV.D (such as sanitary towels, tampons, wet wipes and tobacco products with filters) according to the EC harmonized marking specifications. The marking should inform consumers about the appropriate waste-disposal options of the product.



Waste prevention measures

- **By-products and end-of-waste status:** Each autonomous region will be in charge of classifying certain substances as **by-products** and declaring the **end-of-waste status**.
- **Sustainability:** The AWCL promotes **sustainable production and consumption practices** and the design of efficient and durable products in terms of useful life. It also aims to reduce waste generation in the industrial sector, mining and quarrying, and construction, taking into account the **best available techniques**.
- **Surpluses:** **It is prohibited to destroy or discard unsold surpluses of non-perishable products**, such as textiles, toys and electrical devices, unless another regulation requires their destruction or to protect consumers.
- **Drinking water:** Establishments in the hospitality industry will have to offer unbottled water free of charge to their customers.
- **Food retailers:** All food retailers must accept filling appropriate reusable containers. From no later than January 1, 2023, food retailers with a floor space of at least 400 square meters must allocate at least 20% of their sales area to the sales of products presented without primary packaging, including bulk sales and through reusable packaging.
- **Hazardous waste:** From July 1, 2022, initial hazardous waste producers must have a **waste minimization plan** specifying the practices to be adopted to reduce the amount of generated waste, and report on the results every four years to the authorities of the autonomous region where the production center is located. This obligation does not apply to initial producers that generate less than 10 tons/year in each production center, to installation and maintenance companies or to producers holding an EMAS or other equivalent certification.

Production, possession and management of waste

- **Obligations of initial waste producers and other waste owners:** The AWCL imposes obligations on waste producers regarding waste management, and regarding the storage, mixing, packaging and labeling of that waste. **Initial waste producers and waste owners are likely to be held liable** until the waste has been fully treated and properly documented in the corresponding waste shipment documents and, whenever necessary, by means of a certificate or statement of compliance issued by the final treatment facility, both of which can be requested by the initial producer or owner. The regulations may grant certain exemptions, as long as the traceability and correct management of the waste are guaranteed.



- **Waste management requirements:** The AWCL also sets out general requirements for management companies regarding the storage, shipment, segregation and labeling of waste. It also obliges waste managers to provide a bond or take out insurance, or have an equivalent financial guarantee, and it imposes specific requirements on hazardous waste management companies and in cases provided under specific regulations. Traders can only carry out their activity with hazardous and non-hazardous waste if it has a positive value.
- **Targets and waste management measures:** A schedule is set for the separate collection of new waste fractions, within the competence of municipal authorities (biowaste, textile waste, waste cooking oil, household hazardous waste and bulky waste), along with several minimum targets for the separate collection of all municipal waste generated and to be prepared for the reuse, recycling and the recovery of different waste fractions. The disposal of waste must be carried out safely, and if disposed of in a landfill, it must have undergone previous treatment. The law prohibits the incineration of waste, with or without energy recovery, and dumping in landfills waste collected separately for preparation for reuse and recycling.
- **Specific measures for certain waste:** The AWCL sets out specific provisions regarding (i) biowaste, the separate collection of which should be ensured, and which should be recycled through biological treatment; (ii) the collection and treatment of used oils; and (iii) construction and demolition waste, which must be classified into different fractions, preferably at the site where the waste was generated, establishing that demolition works must be carried out selectively from January 2024.
- **Shipment of waste:** The legal system on the shipment of waste within the Spanish state is maintained and *Regulation (EC) No. 1013/2006*, on shipments of waste for the entry into and exit of waste from national territory, continues to apply, without prejudice to the regulations on the shipment of dangerous goods, if applicable.
- **Notification and authorization system:** The system set out under *Act 22/2021*, for the notification and authorization of waste production and management activities remains the same, as follows:
 - Prior notification is required on starting the activity in the autonomous region where the companies producing the non-hazardous waste exceeding 1,000 tons/year or hazardous waste are located, as well as activities involving waste management, the purchase and sale of waste, agency and shipment.
 - The facilities in which the waste is treated or stored in the context of professional waste collection, as well as individuals and legal entities carrying out those activities, are subject to the authorization system implemented by the competent regional authorities where the facilities are located.



- The authorization system is also applicable to mobile facilities where waste is treated, and to individuals and legal entities that intend to recover or dispose of waste without facilities (landfill or soil treatment, among others), although in both cases a prior notification must be submitted to the regional authorities of the place where each activity will be performed.

Extended producer responsibility (EPR)

- **Wider definition of producer of goods:** The AWCL provides a wider definition of producer to include (i) those that fill products (as well as those that manufacture, import and sell them); (ii) those involved in distance-selling from another country; and (iii) those using e-commerce platforms in the case of foreign sellers not registered in the EPR Register and not fulfilling the remaining EPR obligations.
- **Obligations of producers of goods:** It is expected that certain mandatory measures affecting producers of goods will be imposed by royal decree regarding, for example, the design of goods to minimize the environmental impact of packaging, the use of deposit schemes that guarantee the refund of deposited amounts, and the return of the product for reuse of the waste for treatment. Also, producers will be wholly or partly responsible for the management of waste and will assume financial liability for these activities.
- **Fulfillment of goods producers' obligations:** The Act differentiates between (i) financial and organizational obligations established in EPR schemes, which producers may fulfill individually or through a collective scheme; and (ii) the remaining obligations, which must be fulfilled individually. It also regulates the requirements that must be met when these obligations are voluntarily assumed by the producers of goods, as well as their authorized representatives.
- **General minimum requirements applicable to EPR schemes:** The AWCL sets out the minimum content of the rules regulating EPR schemes and the requirements imposed on schemes relating to the organization and financing of waste management, and it defined the scope of the financial contributions producers of good can make to these schemes. It also regulates the collaborative mechanisms of schemes with others involved in waste management and, specifically, agreements entered into with public administrations involved in waste management, and agreements with other operators for the organization and financing of waste management.
- **Adoption of EPR schemes:** The AWCL regulates the mechanisms to implement individual EPR schemes and collective EPR schemes. Individual schemes are subject to a prior reporting system on starting their activities and must register with the waste production and management registry, while collective schemes are subject to a prior authorization system. It also regulates the necessary financial guarantees and the system applicable in the event of non-compliance with the obligations imposed under the extended liability regime.



- **Supervision, control and monitoring:** It establishes reporting obligations to control and monitor EPR schemes, and specifies how the authorities should perform these monitoring tasks.

Tax measures to promote the circular economy

To prevent and reduce the generation of waste and the adverse effects of waste generation and management, the AWCL introduces, among other measures, two new taxes in the Spanish tax system, which will **enter into force on January 1, 2023**: the special tax on non-reusable plastic packaging and the tax on landfill, incineration and co-incineration of waste.

Special tax on non-reusable plastic packaging

This is an indirect tax **levied, in the territory where the tax is imposed, on the use** of non-reusable packaging containing plastic.

The tax is levied on (i) the **manufacture**, (ii) the **importation**, and (iii) the **intra-EU acquisition** of the following products, included in the objective scope of the tax:

- **Non-reusable packaging** containing plastic
- **Semi-finished plastic products** intended for the **manufacture of packaging**
- **Products containing plastic intended to seal** non-reusable packaging, and for its marketing and presentation

The tax base is calculated based on the amount of unrecycled plastic contained in the above products, applying a fixed rate of €0.45 per kilogram.

The tax liability is widespread, as it is imposed **not only on manufacturers and distributors of packaging, but on those making intra-EU acquisitions or imports into Spain of these plastic containers (regardless of whether they contain anything)**. It is necessary to carry out a **case-specific analysis of the formal and material impact of these new provisions on businesses and distribution chains**.

[Click here to find out more about this tax in our legal flash.](#)

Tax on landfill, incineration and co-incineration of waste

The tax on landfill, incineration and co-incineration of waste is an **indirect tax levied on the deposit of waste in landfills, and the incineration and co-incineration of waste**, applicable throughout Spain.

This tax will replace the taxes already introduced in some autonomous regions and,



therefore, the collection of this tax will be assigned to each one.

Specifically, the tax is levied on **the delivery of waste for (i) landfill disposal, and (ii) its disposal or energy recovery in waste incineration and co-incineration facilities**. It is applicable, in both cases, to authorized public and private facilities and **accrues at the time the waste is deposited, incinerated or co-incinerated**.

The tax base is determined by the weight, in metric tons, with three decimal points, of the waste deposited in each facility. The tax rates will vary depending on the type of facility and type of waste, the maximum rate being set at €40/ton.

Companies delivering waste to landfills and incineration and co-incineration facilities, and the companies managing these facilities **must assess the impact of this new tax and the new liabilities arising from it**.

[Click here to find out more about this tax in our legal flash.](#)

Waste reporting obligations

- **Production and waste management registry:** The AWCL regulates a single registry for the whole of Spain that collects information from other regional registries for waste producers and management companies.
- **Reporting obligations:** It regulates the summary reports that must contain the content of the chronological record of the amount, nature and origin of the generated waste; the amount of products to be reused or recycled; the shipment of waste and the intended use of the products, materials and substances. This is mandatory for registered companies or businesses, and for producers that handle over 10 tons of non-hazardous waste per year.
- **Electronic Waste Information System (e-SIR):** It regulates the electronic system comprising the registers, platforms and software tools that make the necessary information available to monitor and control the management of waste and contaminated land in Spain.

Contaminated land

- **Contaminated land regime:** The system set out under [Act 22/2021](#) basically remains unchanged as regards potentially land-polluting activities, the declaration procedure, contaminated land inventories, and determining the parties liable for land



decontamination and remediation, although it also introduces some significant new developments.

- **New developments regarding the declaration of polluting activities:** Individuals and legal entities that own properties must declare whether they have carried out any **potentially contaminating land-polluting activities** on them, not only at the time the properties are transferred, but also in their declarations of new construction under any title, and in transactions involving the contribution of properties and the allocation of plots resulting from urban development projects.
- **Deadline for decontamination and remediation:** The declaration of contaminated land obliges the liable party to decontaminate and remediate it in the manner and within the time periods determined by the regional authorities. It is generally established that the deadline will not exceed three years, unless a longer term is required for technical reasons.
- **Resolutions on contamination and cancelation of marginal notes in the land registry:** Under the previous system, the **declaration of contaminated land** will require a marginal note in the land registry, as determined by the autonomous region in the legal terms set out by the government. The marginal note will be canceled when the autonomous region declares that the land is no longer contaminated, after verifying that the necessary actions have been taken. As a new development, it is expected that, for these purposes, the party liable for decontamination will have to submit a report certifying that it has been decontaminated. The maximum term for the authorities to issue the resolution declaring that the land has been decontaminated is set at six months. The absence of a reply from the authorities will be considered a rejection. Town councils will be notified of any decontamination and remediation resolutions, enabling them to use this information for the current or future town planning regulations on land use. Finally, property registrars will send an electronic notification to the regional authorities regarding the marginal notes in the land registry referring to land contamination. They will also send this information to the land owner.
- **Decontamination and land-use change:** Under the AWCL, the party liable for decontamination and remediation cannot be required to restore the land to a level above the one associated with the land use existing at the time it was contaminated. It states that if it is necessary to improve the level owing to a land-use change, the developer will be in charge of taking any additional decontamination and remediation measures.
- **State Inventory:** The **State Inventory of Voluntary Decontamination of Contaminated Land** is created, in accordance with the regional registries for voluntary decontamination and remediation.



Update of the penalty system

- **Infringements:** The AWCL classifies infringements and penalties in greater detail, particularly those relating to extended producer responsibility. It also includes new infringements, such as littering.
- **Amounts:** The penalty amounts have been updated.

For additional information, please contact our [Knowledge and Innovation Group](#) lawyers or your regular contact person at Cuatrecasas.

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