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## Cuatrecasas ESG

### New general regime for waste management and changes to the specific waste streams introduced by Decree Law 102-D/2020 of December 10

*Newsletter*

July, 2021



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The new General Regime for Waste Management, the new Legal Regime for Landfill Waste Disposal and many other significant changes to the rules on specific waste streams (such as those for packaging, batteries, electrical and electronic equipment, and end-of-life vehicles) are to come into force on July 1, in addition to numerous other new legal provisions on environmental matters contained in Decree Law 102-D/2020 of December 10.



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## Introduction

In addition to transposing the revision carried out in 2018 of certain EU instruments dealing with waste management into Portuguese law, this legislation introduces significant changes, which are intended to impose or provide continuity to certain paradigm shifts, particularly those relating to:

- renewed emphasis on circular approaches that prioritize reusable products and sustainable, non-toxic recycling systems to reduce the volume of waste generated;
- the new European targets for packaging recycling according to material type;
- reinforcing eco-design practices in product development;
- changes to the structure associated with the planning of waste management, consolidating the content of national waste programs; and
- new rules on waste prevention, with prevention objectives and targets at the urban waste generation level and measures to promote recycling and to minimize the production of hazardous waste.

Given the large number of changes made, this document intends to highlight only a few relevant aspects, without being exhaustive. The legislation applicable in each case should be analyzed carefully.

Finally, there are two **legislative procedures that are still pending**: one by the Assembly of the Republic, and the other by the government, which must soon make several changes to the legal regimes that have now been revised, notably:

- (i) introducing a social waste tariff under the General Waste Regime;
- (ii) strengthening the requirements for the preparation of waste for recycling;
- (iii) reinforcing actions on waste matter awareness, information and development; and (iv) making changes regarding package labelling and marking.

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## Main changes

Out of the many changes that need to be analyzed, regarding the **[new General Regime for Waste Management](#)**, we highlight the following:

- Changes to the structure and assessment of the **waste management tax** (taxa de gestão de resíduos - TGR), to penalize less favorable treatment operations in the waste hierarchy. Municipal councils gain a leading role and responsibility, as they will benefit directly from a portion of the revenue from the TGR, which must be used for investment in waste management and the circular economy.



- The law establishes the passing-on of the fee along the entire waste chain down to the “end consumer.”
- A significant increase is planned in the tax rate in the coming years, as it will be held at €22 per ton of waste in 2021 and 2022, rising to €25 in 2023, €30 in 2024, and €35 in 2025.
- During 2021, municipalities will be able to opt for the return of the TGR through the Environmental Fund, by complying with several requirements.
- Changes to the definition of the **scope of urban waste management**, which will now include the origin, quantity, nature and classification of the waste, not only the codes included on the European List of Waste (ELW).
- New requirements for the **separate collection of hazardous waste produced by households** and for **textile** waste, mainly to ensure the separate collection of **biowaste**.
- New requirements for **hazardous waste producers** that generate more than 100 tons, which will have until January 1, 2023, to submit a plan to the National Waste Authority (ANR) for reducing the generation of that waste over a 6-year period.
- Measures to develop **waste recycling**: through their waste management plans and programs, entities that generate waste will have to implement steps to ensure the ability to increase the reuse and recycling of urban waste by at least:
  - 55% by 2025, of which at least 5% must come from the reuse of textiles, electrical and electronic equipment, furniture, and other reusable waste;
  - 60% by 2030, of which at least 10% must come from the reuse of textiles, electrical and electronic equipment, furniture, and other reusable waste; and
  - 65% by 2035, of which at least 15% must come from the reuse of textiles, electrical and electronic equipment, furniture, and other reusable waste.
- As from January 1, 2024, **printing and automatically distributing the following will be prohibited**:
  - Receipts in sales areas and establishments open to the public
  - Customer loyalty cards made available by stores and store chains
  - Tickets from machines
  - Vouchers and tickets intended to promote or reduce the sales price of products or services

The above items may be printed if requested by the customer.

The amount of **financial contributions producers of products pay** to comply with their extended responsibility must cover the cost of selective waste collection, transportation and



treatment and appropriate notification to waste holders, and requirements for collecting and notifying data.

- More demanding requirements to be followed by **individual and integrated waste treatment systems**, with specific flow management systems for waste covered by extended producer responsibility already created being obliged to ensure compliance with those requirements by January 5, 2023.
- Mandatory **inclusion of recycled materials** in the design and manufacture of new products, under the terms defined by regulations.
- Option to sign **agreements regarding waste management** between the National Waste Authority and the producers or holders of waste, product manufacturers, associations, social economy organizations, or other entities that can contribute to implementing waste policies, with the aim of managing a specific flow of waste not regulated as a specific waste flow.

Regarding the **management regime of specific waste flows** subject to the principle of extended producer responsibility, we highlight the following changes:

- New restrictions on the setting up of Management Entities for **Integrated Waste Management Systems**
- Requirement for **packers using reusable packaging** to establish mechanisms for the reuse of packaging
- Inclusion of the new European packaging recycling targets
- Revision of visible fees **modelling** on the basis of product **eco-design**
- Prohibition on the handing out of free **shopping bags**, regardless of their material



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## Significant changes for specific sectors

Legislative changes will also affect specific sectors, as indicated below.

### Hotels, tourism and restaurants

- Measures have been included to reduce food waste in the restaurant sector and in production and supply chains, including agri-food industries, catering companies, supermarkets, and hypermarkets, and the path is being cleared to set measures to combat food waste. The following targets have been set:
  - A reduction of 5% by 2025 in the volume of urban waste per inhabitant compared with the figures for 2019
  - A reduction of 15% by 2030 in the volume of urban waste per inhabitant compared with the figures for 2019
  - A reduction of 25% by 2025 compared with the figures for 2020 in the volume of food waste in the restaurant sector and in production and supply chains, including agri-food industries, catering companies, supermarkets, and hypermarkets
  - A reduction of 50% in the volume of food waste in these establishments by 2030
  
- To achieve those targets, it has been established that:
  - the government will be able to set specific targets by sector;
  - by December 31, 2023, restaurant establishments generating biowaste in excess of 12 tons per year, as well as agri-food industries, catering companies, supermarkets, and hypermarkets employing more than 10 people, must implement measures to combat food waste;
  - as from January 1, 2024, food retailers, the food production industry, wholesale food traders, and restaurant establishments will be prohibited from disposing of food that can still be consumed, and they must ensure there is a safe way to pass on those products;
  - public and private entities will be required to donate products rather than turning them into waste, and the ANR will be responsible for drawing up a list of the kinds of items constituting products suitable for donation.
  
- Producers of bio-waste from restaurant and industrial activities must separate them at source, without mixing them with other waste. Selective collection of that waste will be the responsibility of municipal or multi-municipality collection systems.
  
- By January 1, 2025, the entities responsible for the municipal urban waste management system must provide and control a selective collection system for textile waste, bulky items (such as mattresses and furniture), hazardous waste, used edible oil, and construction and demolition waste from small repairs and domestic home improvements.



- Regarding hotel and restaurant establishments, as from January 1, 2023, soft drinks, juices, beers, table wines, and natural mineral waters from springs and other bottled waters for immediate consumption at the establishment must be packed in reusable primary containers when available in the market, and retailers will be able to grant preference to the sale of those products in such packaging.
- Establishments providing take-away meals and selling goods in bulk will be required to allow their customers to use their own containers to take away their purchases.

### Electrical and electronic equipment

- EEE manufacturers must adopt product sustainability criteria in their production processes (e.g., efficient use of resources, reduced use of hazardous chemicals, and durability), and will be required to demonstrate regularly the measures they have implemented to the APA (Portuguese Environment Agency) and the DGAE (Directorate-General of Economic Activities).
- The obligations of all the agents along the value chain, from producer to end consumer, have been strengthened in relation to the directing and processing of EEE waste, with an overall requirement to direct waste to the individual and integrated waste management systems and a ban on sending that waste to waste management operators other than the reception centers of the entities managing the integrated systems.
- The requirement for manufacturers and their related traders to take back WEEE when individuals are purchasing new equipment, particularly in the case of distance sales, has also been strengthened.
- The charges to be paid by the Management Entities to the Urban Waste Management Systems (Sistemas de Gestão de Resíduos Urbanos - SGRU) to collect and sort WEEE and car and appliance batteries have been established in a similar way to those for packaging.
- It is planned to require producers to pay through the individual or integrated systems to collect, process, reuse, and eliminate WEEE, particularly the waste from their own products that have been sold on the market since August 13, 2005.

### Construction

- Waste resulting from this industry will no longer be regulated in separate legislation but will be covered by the General Regime for Waste Management.
- Targets have been established for a reduction in non-urban waste per unit of GDP, particularly in the construction and public works sector, based on 2018 figures, which have been set at :



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- 5% by 2025; and
- 10% by 2030.
  
- By January 1, 2025, the entities responsible for the municipal urban waste systems will have implemented a selective collection structure to construct and demolish waste from small repairs and domestic home improvements.
  
- Those generating construction and demolition waste will be responsible for its disposal.
  - The mechanisms for the control of work completion and selective demolition plans subject to prior control must be included in municipal urban planning and building regulations.
  - The construction owner may transfer responsibility for waste management to the builder contractually.
  
- The treatment of construction and demolition waste from private works subject to prior licensing or notification and the management of waste from public works has also been regulated.

### E-commerce platforms

- To comply with producer obligations established under extended producer responsibility, manufacturers of products established in another EU Member State or any third country selling goods using distance communications technology directly to end consumers in Portugal are required to name a person or company established in Portugal as their authorized representative.
  
- WEEE takeback obligations when new equipment is purchased have been expressly strengthened for distance sales.

### Motor industry

- Vehicle manufacturers will now be responsible for end-of-life vehicles management in either individual or integrated systems, and they must guarantee that they will receive end-of-life vehicles at reception centers or salvage yards



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