Oceana's contribution to TRIS notification 2022/325/E (Spain) on the draft Royal Decree on Packaging and Packaging Waste

August 2022

GENERAL REMARKS

It has been estimated that, globally, Spain ranks eighth in per capita generation of single-use plastic waste; it is also among the EU Member States (MS) that have the highest marine pollution problems. Given that the sea has no borders, the Royal Decree (RD) on Packaging and Packaging Waste should be perceived as a unique opportunity to make the most of the possibilities offered by the directives it transposes.

The RD does not anticipate the revision of the Packaging and Packaging Waste Directive (PPWD), but it transposes its current text. Delaying the measures to rationalise packaging will imply missing legal deadlines, increasing the consumption of raw materials – including fossil-based plastic – and perpetuating a massive pollution problem.

Alignment with other EU Member States

As can be seen in the examples mentioned in the following pages, the provisions in the RD that exceed the minimum requirements set by the PPWD and the Single-Use Plastic Directive (SUPD) are not radically different to many already established by other MS. It is truly regrettable that national lawmakers use concerns about "breaching the EU single market" as justification for avoiding taking bold action. This should prompt the EU to raise its level of ambition, aligning with the frontrunners inside and outside of the Union.

In fact, the RD's impact will benefit other countries. One of its most immediate impacts can be found when reviewing tracking simulations of marine litter: due to marine currents, the eventual measures taken by Spain to prevent littering will be beneficial to other countries in the Mediterranean basin. The top five recipients of Spanish marine litter include two MS – Italy and France. The environmental cost of Spain's inaction would be paid by them as well.

Unaccounted costs of marine litter

The issue of marine plastic pollution is not even mentioned in the RD, although the SUPD alludes to it several times, starting from its first paragraph: "*the steady increase in plastic waste generation and the leakage of plastic waste into the environment, in particular into the marine environment, must be tackled in order to achieve a circular life cycle for plastics*".

Marine pollution is not addressed by Extended Producer Responsibility, even though its magnitude is particularly worrying in countries like Spain, which receives a large number of tourists each year (83.5 million before the Covid-19 pandemic, versus 47 million inhabitants), has a vast Exclusive Economic Zone (1 million sqkm), and an average marine depth of -3,013 metres.

The impact of plastic pollution is clearly visible on Spanish beaches. According to the Joint Research Centre, the average is between 83 items per square metre in the least polluted region and as much as 474 items in the most polluted areas, whereas the threshold to achieve Good Environmental Status established by the Marine Strategy Framework Directive is just 20 items.

The commercialisation of packaging and single-use plastics (SUPs) needs to be adapted to this reality, just as the contents of these containers are adapted to local tastes. This means that the legislation in place should be even more ambitious than in landlocked countries – yet the RD falls short.

PREVENTION

Oceana welcomes the steps taken by the RD towards the prevention and reduction of packaging, notably plastic packaging. Spain ranked fifth and accounted for 7.5% of European plastics demand, according to market research published by Plastics Europe, in 2021. This industry association calculated that plastics converters demand in EU27+3 (Norway, Switzerland and the UK) totalled 49.1 Mt, of which 40.5% was demand for packaging (versus 39.6% in 2020). These figures show that there is ample room to reduce the use of packaging, particularly that made of plastic.

Legally-bound by international conventions

A proportion of this packaging becomes marine litter, and Spain is legally-bound by international conventions to take measures. Spain is a contracting party to the OSPAR Convention, as is the European Union itself and many Member States. Its Strategy for the Protection of the Marine Environment of the North-East Atlantic 2030 includes Strategic Objective S4.O3, which reads:

"By 2025 OSPAR will reduce by at least 50% the prevalence of the most commonly found single-use plastic items and of maritime-related plastic items on beaches in order to contribute to the achievement of relevant regional and EU threshold values building upon requirements for EU Member States in the EU Single Use Plastics Directive (Directive 2019/904), and by at least 75% by 2030" [emphasis ours].

Without urgent and much bolder actions, this 2030 deadline will be missed. It is therefore not possible to wait for a revised Packaging and Packaging Waste Directive; the RD needs to set the baseline, considering that the industry's voluntary commitments have not been enough and plastic waste continues to reach the ocean day-after-day, with no accountability for producers. This is also relevant for Europe's most plastic-polluted sea, the Mediterranean, despite the Barcelona Convention having updated its Regional Plan on Marine Litter in 2021.

Bottles

Oceana is critical that article 6.2 reads "*the aim will be to achieve a 20% reduction in the number of single-use plastic beverage bottles*" instead of using stronger wording. This target, unambitious as it may be, is aligned with the provisions to promote the consumption of potable water laid out in the Spanish Waste Law (article 18.3), and in article 7.1 and 7.6 of the RD on implementing alternatives to packaged drinks in public events.

The goal to reduce SUP bottles does not prevent producers from marketing bottled beverages, but it promotes waste prevention. Arguments that this measure will hinder the recycled content and separate collections goals set by the SUPD do not take into account the waste hierarchy established in article 4 of the Waste Framework Directive: i) prevention, ii) preparing for re-use, iii) recycling, iv) other recovery, v) disposal.

Cups and food containers

The RD requires that event organisers provide alternatives to single-use cups. It should, however, have gone beyond this in defining how to achieve the reduction targets for cups and food containers set out in the Waste Law (transposing the SUPD). Considering that other MS have included provisions not just related to events, but also to on-site consumption and take-

away, among others, the RD could and should have further restricted SUP cups and food containers. Additional measures such as removing these items from the maritime-terrestrial public domain and from protected areas would have been well-aligned with Spain's biodiversity values and would have duly reflected the importance of tourism for the country.

Fruit packaging

Oceana welcomes the obligation in article 7.4 of the RD to present fresh fruit and vegetables whole in bulk for batches up to 1.5 kg. This measure is already in place in France, the second largest market for Spanish exports of fresh fruit and vegetables. It must be considered that the same products are currently sold loose in street markets and packaged in supermarkets, and that much of this packaging is unnecessary to preserve the fruit and is hardly recyclable (e.g. mesh bags for citrus fruit or plastic wrapping for bananas). Given that Spain is the largest producer of fruit and vegetables in the EU, and that MS such as Luxembourg and Portugal already have similar measures, this sets an excellent precedent for replicating the measure at EU level.

Other common SUP packaging

It is regrettable that the RD does not provide details on how the Ministry for the Ecological Transition will follow-up on the Waste Law's call to voluntarily reduce the marketing of single-use plastic trays, single-servings (sachets), 6-pack rings, and candy and ice-cream sticks. Some of the latest countries acknowledging there are alternatives to these products are Canada, which banned plastic ring carriers in June, and India, which in July banned a list of SUPs including trays, and candy and ice cream sticks. Meanwhile, Spain and the EU are falling behind instead of demonstrating similar leadership.

REUSE

Reuse and refill have been the norm for centuries, while single-use is a business model that has only been established in recent decades. The EU single market cannot serve as the justification for a throw-away culture. Rather, multinational producers can use it as an incentive to harmonise and standardise reuse formats through economies of scale. This could ease operations across countries, and could also provide small operators with empty, ready-to-use bottles close to their facilities.

Single-use containers are more prone to being littered than reusable ones. By perpetuating a double standard (depending on the distribution channel), the RD dismisses the market opportunities posed by refillable containers, ignores that quotas for refillables are already higher in some EU MS, and allows for the perpetuation of marine pollution that is not covered by Extended Producer Responsibility. Furthermore, the decision to exclude glass containers from the RD will minimise the potential of moving to refillable options and will perpetuate single-use ones.

Reuse targets

Article 6.1 of the RD states that all containers placed on the market should be recyclable and, whenever possible, reusable by 2030. Article 8.1 sets out that reusable containers for household consumption should amount to 5% of the total placed on the market, and 20% in the case of commercial packaging, with both targets to be achieved by 2030.

The RD should have aligned with Portugal, which has set a target in place that 30% of all packaging should be reusable by 2030, taking into account that many retailers and fast-moving consumer goods multinationals have Iberian subsidiaries that market their products across the peninsula, even with labelling in both Spanish and Portuguese.

Such a decision, rather than undermine the upcoming review of the PPWD, would have allowed for a pilot test or an intermediate step for a much-needed shift of business models towards reduction and reuse across the EU. It must be noted that other MS also have higher targets, such as Austria (also 30% by 2030) or Sweden (30% increase in 2030 over 2022 level).

It is also worth mentioning that consumers currently have to buy dozens of containers every year that they do not want to keep – i.e., it is extremely complicated to buy a beverage without buying the bottle as well.

Beverage containers

The significant percentage of refillable bottles currently used in Spanish bars and restaurants is very different to the situation in retail, and it demonstrates that the market is not broken when producers use different containers and logistics channels based on the purchaser.

It would be desirable, however, that the RD did not perpetuate this gap and instead promoted that the strategies for these channels should be more closely aligned. Article 8 of the RD sets targets of between 30% and 70% of reusable beverage containers for the horeca sector, versus a meagre 10% for household consumption. Article 9.4 establishes that retailers must offer a minimum number of products in reusable containers depending on their commercial area, with hypermarkets over 2500 m2 being required to offer only seven such types of products.

This provides a sharp contrast to other EU Member States. For example, Germany established a 70% target of reusable beverage packaging in 2017, and even though large German chains of retailers operate in Spain, they do not provide refillable options. The diverse performance of one same retailer depending on the countries where it operates has been denounced by Changing Markets.

The RD should set targets aimed at closing the gap between Spain and frontrunning MS when it comes to refillables – e.g. 50% for all beverage containers for household consumption in 2030, and 80% for water bottles in horeca. It should also take into account that high rates of refillables for household consumption are feasible, considering that bringing back empty refillable bottles to the corner shop was a standard practice in Spain up to the 1980s, and that the horeca sector is nowadays an example of the feasibility of reverse logistics for returning empty containers.

DEPOSIT RETURN SYSTEMS

The establishment of a Deposit Return System (DRS) was already an option provided in 1998's version of the Spanish Waste Law (article 7.1), yet producers opted for a different waste management system that so far has not achieved the recycling targets established by the Waste Framework Directive (actually, a recent scientific paper calculated that only 10.7% of plastic is recycled in Spain). In 2019, the SUPD's article 9.1 also suggested the option of establishing a DRS to meet the separate collection targets of plastic bottles. The updated Waste Law that transposed this requirement postponed the decision on the eventual implementation of a DRS until the collection results of year 2023 have been assessed, at the earliest.

Eleven European countries already have DRS in place, and their collection rates are around 90%. Further delaying the establishment of a DRS in Spain will not ensure uniform systems across the EU, but it will ensure that millions of containers pollute the ocean meanwhile. An Oceana study released in 2020 found that increasing the market share of refillable bottles by 10% in all coastal

countries, in place of single-use throwaway PET bottles, could reduce PET bottle marine plastic pollution by 22%.

Environmental impact, and contribution to recycled targets

The feasibility study commissioned by the Ministry for the Ecological Transition for the revision of the Waste Law estimates a collection rate for plastic bottles of 52% with the current system, versus 90% with a DRS; 34% for cans versus 91% with a DRS; and 59% for cartons versus 66% with a DRS (Table 99). Plastic bottles, cans, and cartons are the three types of containers included in article 47 of the RD to ensure the technical, environmental, and economic feasibility of the system.

Moreover, the DRS would increase the quality and purity of the material recovery, as well as allowing the percentage of rPET content required by the SUPD to be achieved. It could also make it possible to increase high rates of refillable containers. At the same time, the feasibility study calculates that the carbon footprint would be halved versus the current system (Table 110).

Of the plastic littered in the ocean, only 0.2% is estimated to float. "Plastic traps" such as seamounts, underwater canyons, escarpments, and reefs capture large quantities of rubbish that is impossible to retrieve. Globally, the top ten most common products found as marine litter include plastic bottles, glass bottles, and beverage cans; of these, plastic bottles are the most frequently identified item on the seafloor in deep areas (22.6% of the findings).

According to data from a report done by Reloop, a DRS would prevent 6,045 billion cans and bottles from ending up in nature, landfills, or being incinerated in Spain every year. It must be noted that much of the associated costs of this issue are covered by volunteers in clean-ups and citizens via municipal taxes, not through EPR.

MARKING AND LABELLING REQUIREMENTS

Oceana welcomes the measures aimed at making packaging more sustainable, including the prohibition on displaying non-verified claims, such as 'environmentally friendly' or others that may lead to littering. These kinds of misleading labels can lead consumers to think that the packaging will degrade in any environment, when in reality this is not the case. This will be very useful in cases of bio-based, biodegradable, and compostable plastic, which are not designed to degrade in most environments, and particularly not at sea.

Intra-EU trade already faces several differences across countries – for example, the need to translate labels into different languages, or the symbols added to inform consumers of what is the right way to dispose of different types of containers. Added to this, producers often modify the labelling to include marketing claims (e.g. 'new', 'new recipe', 'gratis'…). A similar case happens with recycled content, as it has been estimated that the PET bottles placed on the European market only contain on average 17% rPET.

The measures laid out in the RD should not be seen as hindering the free movement of goods, but as preventing the introduction of packaging that is deemed harmful for the environment. Misleading labelling has no place in this approach and should not be permitted.

FINAL REMARKS

Manufacturers and retailers operate in a highly dynamic environment, with new operators entering the market, new launches by competitors, changing habits of consumers, etc. A legislation that is not a shift, but an incremental set of measures towards the reduction of waste and littering should come as no surprise. Legislative procedures take months or even years, and

they require political consensus that is often complicated to reach. Anyone who operates in the EU is aware that the protection of the environment is an increasing social demand and existing pieces of legislation are expected to adapt to it.

In light of the current climate, biodiversity and energy crises, the improvement of legislation should not be framed as an obstacle for multi-national operators. It is rather an enhancement of protection to EU citizens and the environment, just as happens with measures restricting toxic components in products introduced in the EU market, for example. Producers can avoid complexities related to navigating different levels of legislation simply by adopting the highest standards for all their products.

Finally, the release of ambitious national legislation does not undermine the revision of the PPWD, but it paves the way towards a reuse transition by leading by example. The EU should hear the voices of the many MS that are trying to be more ambitious with their targets and practices than the current legislation stipulates, and should ensure that the revised Directive responds to these demands.

About Oceana

Oceana is the largest international organisation dedicated solely to the conservation and defence of the oceans. Oceana focuses its efforts on restoring marine richness and biodiversity around the world and on implementing science-based policies in countries that control one third of the world's fish catch. Our campaigns are producing results, as shown by more than 200 victories in the fight against overfishing, habitat destruction and pollution, and supporting the conservation of endangered species such as turtles and sharks. Restoring the oceans would mean that a billion people could enjoy healthy fish today, tomorrow, and forever.