Decree No 2022-507 of 8 April 2022 on the minimum proportion of reused packaging to be placed on the market annually

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ELI: https://www.legifrance.gouv.fr/eli/decret/2022/4/8/TREP2136706D/jo/texte

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JORF No 0084 of 9 April 2022

Text No 3

Groups concerned: the manufacturers of packaging, the producers, importers, distributors or other marketers of products using packaging, the eco-organisations referred to in Article L. 541-10, those involved in reuse and recovery activities.

Purpose: minimum proportion of reused packaging to be placed on the market annually in France pursuant to Article 67 of Law No 2020-105 of 10 February 2020 on the fight against waste and on the circular economy.

Entry into force: the provisions of this Decree enter into force on 1 January 2023.

However, they shall apply only from 1 January 2025 to packages of products for which the specification of the signs of identification of quality and origin provided for in Articles L. 641-1 to L. 641-13 of the Rural and Maritime Fisheries Code prohibits the reuse or recovery of their packaging.

Notice: the Decree defines for the years 2023 to 2027 the minimum proportion of reused packaging to be placed on the market annually in France in order to achieve the reuse targets set out in Article L. 541-1 of the Environmental Code, i.e. 5 % in 2023 and 10 % in 2027. It specifies the producers concerned and provides for the possibility for these producers to form a collective structure or to rely on their eco-organisation to fulfil their reused packaging obligation.

References: the Environmental Code, as amended by the Decree, may be consulted on the Légifrance website (https://www.legifrance.gouv.fr).

The French Prime Minister,

Following the report of the French Minister for the Ecological Transition,

Having regard to the Environmental Code, in particular Articles L. 541-1, L. 541-1-1, L. 541-9-6, L. 541-10 à L. 541-10-18, R. 541-128, R. 541-350, R. 541-351 and R. 543-43;

Having regard to the French Rural and Sea Fisheries Code, in particular Articles L. 641-1 to L. 641-13 thereof;

Having regard to Notification No 2021/510/F addressed to the European Commission on 27 July 2021;

Having regard to the observations made during the public consultation carried out between 16 September and 19 October 2021, in accordance with Article L. 123-19-1 of the Environmental Code;

Having heard the Council of State (public works division),

Hereby decrees:

Article 1

I. - After Article R. 541-335 of the Environmental Code, a new article is inserted as follows:

‘Article R. 541-336. - I. - The following shall incur the fine specified for third class offences:

‘1. For the operator of an establishment open to the public or the person in charge of a business premises, distributing plastic bottles containing beverages free of charge in breach of the tenth paragraph of point 2 of III of Article L. 541-15-10;

‘2. For a producer, importer or distributor who places on the market the products referred to in Article R. 541-335, disregarding the marking obligations laid down in that article.

‘II. - The following shall incur the fine specified for fifth class offences:

‘1. For a producer, importer or distributor, disregarding one of the prohibitions on making available or placing on the market laid down in the second, third, fourth, tenth or eleventh paragraphs of III of Article L. 541-15-10;

‘2. For a producer, importer or distributor, disregarding the prohibition on placing on the market laid down in the seventeenth paragraph of III of Article L. 541-15-10;

‘ Repetition of fifth class offences laid down in this Article shall be sanctioned pursuant to Articles 132-11 and 132-15 of the Penal Code.’

II. - After Article R. 541-342 of the Environmental Code, an article is inserted as follows:

‘Article R. 541-343. - I. - The fine laid down for third class offences shall be incurred if a seller of takeaway beverages does not adopt a lower rate when the beverage is sold in a reusable container presented by the consumer in relation to the price charged when the drink is served in a disposable cup, in breach of the fifth paragraph of Article L. 541-15-10.

‘II. - The following shall incur the fine specified for fifth class offences:

‘1. For the operator of an establishment open to the public referred to in Article D. 541-340, not to make a drinking water fountain available to the public in breach of that article;

‘2. For the operator of a home catering service referred to in Article D. 541-341, using dishes, cutlery or containers for the transport of food or beverages that are not reusable or not collecting them for reuse in breach of that article;

‘3. For a person engaged in on-site catering referred to in Article D. 541-342, serving meals or beverages in dishes, or with cutlery, which are not reusable in breach of that article.

‘Repetition of fifth class offences laid down in this Article shall be sanctioned pursuant to Articles 132-11 and 132-15 of the Penal Code.’

Article 2

Book V, Title IV, Chapter I, Section 10, Subsection 5 of the Environmental Code is amended as follows:

1. The heading of the subsection is replaced by the following:

‘Subsection 5

‘Re-use and recovery of packaging’;

2. Articles R. 541-350 and R. 541-351 are replaced by the following provisions:

‘Article R. 541-350. - I. - This subsection sets out the detailed rules for the application of point 1 of I and III of Article L. 541-1.

‘II. - For the purposes of this subsection, the following definitions shall apply:

‘1. “Packages”, those which meet the conditions specified in Article R. 543-43;

‘2. “Producer”, any person who, in a professional capacity, packs or has packed their products for the purpose of placing them on the market, any importer whose products are marketed in packaging or, if the producer or importer cannot be identified, the person responsible for the first placing on the market of such products;

3. “Reused or recovered packaging”, packaging which is the subject of at least one second use for a use of the same kind to that for which it was designed, and of which the reuse or recovery is organised by or on behalf of the producer. A package that is the subject of at least one second use by being filled at the point of sale as part of bulk sale, or at home in the case of a refilling device organised by the producer, is deemed to be reused.

‘III. - The provisions of this subsection shall not apply to:

‘1. Packaging of products for which a national or Community legislative or regulatory provision prohibits the reuse or recovery of such packaging due to health or safety requirements of the consumer;

‘2. Packaging of products whose placing on the market requires an authorisation which prohibits their reuse or recovery or imposes an obligation to dispose of the used product with its container;

‘IV. - The unit of measurement of reused or recovered packaging corresponds to each piece of packaging, whether it is primary, secondary, or tertiary within the meaning of Article R. 543-43.

‘However, the producer may adopt another unit of measurement for reused or recovered packaging corresponding to an equivalent capacity, where they can justify that such equivalent unit of measure is more suitable for packaged products. In this case, the unit of measurement shall correspond to a capacity equivalent to 0.5 litre for liquids and 0.5 kilogram otherwise.

‘Article R. 541-351. - The obligations relating to the placing on the market of re-used or recovered packaging shall be imposed on any producer responsible for placing on the market at least ten thousand units of packaged products per year and on any approved eco-organisation for packaging.

‘The producers concerned shall fulfil their obligations either individually or by participating in a collective structure whose annual obligation corresponds to the sum of the minimum obligations of each member.

‘Producers who have joined an eco-organisation fulfil their obligation through that eco-organisation, which in this case fulfils the role of collective body.

‘Article D. 541-352. - The minimum proportion of re-used or recovered packaging to be placed on the market annually shall be fixed as follows:

‘1. For producers reporting an annual turnover of less than EUR 20 million:

‘- 5 % in 2026;

‘- 10 % in 2027;

‘2. For producers reporting an annual turnover of between EUR 20 million and EUR 50 million:

‘- 5 % in 2025;

‘- 7 % in 2026;

‘- 10 % in 2027;

‘3. For producers reporting an annual turnover of more than EUR 50 million:

‘- 5 % in 2023;

‘- 6 % in 2024;

‘- 7 % in 2025;

‘- 8 % in 2026;

‘- 10 % in 2027.

‘Article R. 541-353. - In order to achieve the targets for reused or recovered packaging placed on the market laid down in Article D. 541-253, all approved eco-organisations for packaging shall implement the modulations provided for in Article L. 541-10-3 and contribute to the development of solutions for the reuse and recovery, including for other packaging than those covered by its approved category, relying in particular on the funds provided for in Article L. 541-10-18(V). Such contributions shall take the form of financial support granted on the basis of procedures open to any eligible person applying for them or on the basis of competitive selection procedures.

‘Article R. 541-354. - Every person subject to the obligation provided for in Article R. 541-351 shall communicate annually to the administrative authority referred to in Article L. 541-10-13 the total quantity of packaging that it or its members have placed on the market as well as the proportion of reused or recovered packaging.’

Article 3

Point 2 of Article R. 543-54 of the Environmental Code is replaced by the following:

‘2. “Producer”, a person who has this status pursuant to Article R. 541-350 for packaging falling within the scope of point 1 of this article.’

Article 4

The provisions of this Decree shall enter into force on 1 January 2023.

However, they shall apply only from 1 January 2025 to packages of products for which the specification of the signs of identification of quality and origin provided for in Articles L. 641-1 to L. 641-13 of the Rural and Maritime Fisheries Code prohibits the reuse or recovery of their packaging.

Article 5

The French Minister for the Ecological Transition and the Minister for Agriculture and Food shall be responsible, within the scope of their respective competences, for the implementation of this Decree, which will be published in the Official Journal of the French Republic.

Dated on the 8 April 2022.

Jean Castex

By the Prime Minister:

The Minister for Ecological Transition,

Barbara Pompili

The Minister for Agriculture and Food,

Julien Denormandie