

MORE ABOUT PACKAGING LABELLING REQUIREMENTS - NEW OBLIGATIONS AND LATEST NEWS

In an earlier issue of this year's Market Place, I explained the new requirements regarding packaging labelling introduced by Legislative Decree No. 116 of 03/09/2020 (in implementation of European directives into national law).

The obligations are essentially the responsibility of packaging producers, but the penalties for non-compliance apply to anyone who places full or empty packaging on the internal market without the envisaged information requirements. However, following that article and despite the fact that only a few months have passed, **the legislation in question has undergone some significant changes, including a postponement to 31/12/2021 of all the main obligations and the provision of a deadline for disposing of stocks at such date of non-compliant products.**

I therefore dedicate this article to the presentation of the **up-to-date** rules on packaging labelling.

1 . What exactly are the legal regulations introduced?

Legislative Decree No. 116 of 03/09/2020 was published in the Italian Official Gazette of 11/09/2020, in implementation of several European directives: Directive 2018/851/EU on waste, and Directive 2018/852/EU on packaging and packaging waste. In particular, Art. 3, paragraph 3, point 3.c) of Legislative Decree 116/2020 amended **paragraph 5 of Art. 219 of the Consolidated Environmental Law (Testo Unico Ambientale, Legislative Decree 152/2006)**, introducing specific labelling requirements for packaging.

2. Which are, in essence, the information requirements to be fulfilled with labelling?

Art. 219 (5) of the Consolidated Environmental Law states that:

“All packaging must be appropriately labelled in accordance with the procedures established by the applicable UNI technical standards and in compliance with the decisions adopted by the European Union Commission, in order to facilitate the collection, reuse, recovery and recycling of packaging, as well as to provide correct information to consumers on the final destination of packaging.

Producers are also obliged to indicate, for the purposes of identification and classification of the packaging, the nature of the packaging materials used, based on Commission Decision 97/129/EC”.

The above translates, in summary, into the need for packaging to contain two kinds of information:

2.1. Information necessary for the correct identification and classification of packaging, which include the alphanumeric coding required by Decision 1997/129/EC in addition to other supplementary indications: this applies (a) either to packaging as it is and to packaged products and, (b) to packaging intended for ‘professionals’ (professionals are defined by the Italian Consumer Code as any natural or legal person who is acting for purposes related to his trade, business or profession, or his intermediary (B2B circuit), and to those intended for end consumers only (B2C circuit);

2.2. Appropriate wording for separate collection: this applies only to packaging (full or empty) intended for end consumers (B2C circuit only);

2.3. However, Legislative Decree No. 41/2021, converted with Law No. 69 of 21/05/2021, provides, under Art. 39, for the suspension until 31/12/2021 of the application of **the ENTIRE paragraph 5 of Art. 219 of the Consolidated Environmental Law**, while **Legislative Decree No. 183 of 3/12/2020** (so-called ‘Milleproroghe’ or ‘One thousand extension’ decree) had previously ordered the suspension of information provision until 31/12/2021 only with reference to the obligations to include the necessary indications for separate collection;

2.4. The same Legislative Decree No. 41/2021 also provided that “*products without the requirements established by Art. 219 (5) and already placed on the market or labelled as of 1 January 2022, may continue to be marketed until stocks are exhausted*”.

Therefore: all packaging (primary, secondary, tertiary) must include the alphanumeric coding provided for in Decision 1997/129/EC and other additional indications; primary packaging (intended for consumers) must also include the appropriate wording for separate collection.

However:

- Both obligations are suspended until 31/12/2021;

- A ‘grace period’ has been established in order to dispose of remaining stocks of products already placed on the market or labelled as of 1 JANUARY 2022.

3. The alphanumeric coding provided for in Decision 1997/129/EC and other complementary information

- As already mentioned, the coding referred to in Decision 1997/129/EC must always be shown, both on primary packaging, intended for consumers (B2C), and on secondary and tertiary packaging, intended for ‘professionals’ (B2B). It is an alphanumeric system (i.e. consisting of numbering and abbreviations) which varies according to the seven types of materials considered in the related Annexes attached to the Commission Decision (I plastics; II paper and fibreboards; III metals; IV wood materials; V textile materials; VI glass; VII composites). By way of example, Table 1 below shows **Annex I** (plastics) and Table 2 shows **Annex II** (paper and fibreboards).

- Paragraph 5 of Art. 219 of the Consolidated Environmental Law generically refers to any Community 'resolution' applicable to packaging labelling, but at the moment there are no others in addition to the aforementioned Decision 1997/129/EC. However, the same Art. 219 of the Consolidated Environmental Law also refers to "*the labelling procedures established by the applicable UNI technical standards*" (which are generally voluntary); in practice, are mentioned the very few specific UNI standards currently in existence that apply: (a) to plastic packaging (UNI 1043-1 for plastics not included in Decision 1997/129/EC, and UNI 10667-1 to distinguish the polymers that come from recycling) and, (b) plastic packaging made up of several polymers (UNI 11469).

4 . The appropriate wording for separate collection (point 2.2. above)

As we have seen, the labelling of primary packaging (therefore intended for consumers), empty or full, must include the necessary information "...*to provide consumers with correct information on the final destination of packaging*" (Consolidated Environmental Law, Art. 219 paragraph 5). The purpose is to communicate to consumers how packaging waste is to be disposed of. CONAI, in its "*Guidelines for environmental labelling of packaging*"¹ suggests using a phrase such as "*Separate collection...*" followed by the type of material (e.g.: "*Separate paper and fibreboards collection*") accompanied by an invitation to check with the competent territorial Municipality about further provisions on waste collection.

5. Obligation to identify packaging materials in the case of particular types of packaging

An Interpretative Circular of the Ministry of Ecological Transition (MITE) dated 17/05/2021 and signed by Laura D'Aprile (MITE General Director) gives some details with reference to the following particular types of packaging; I cite the following clarifications as they may be of particular interest to the readers of Market Place:

- Small, multilingual and imported packaging

These are pre-packaged products of foreign origin, with small packaging (capacity <125 millilitres or surface <25 square centimetres) or with limited printed spaces and multilingual labelled packages, for which the destination market is not specified.

"Even for such cases it seems essential to ensure the use of digital tools (such as apps, QR codes, barcodes or, where even these options are not viable, make available this information on the

¹ <https://www.etichetta-conai.com/en/documents/guidelines-for-the-environmental-labelling-of-packaging/>

websites) which make it possible to provide a correct and complete communication also to the final consumer with lower development costs for businesses”.

- Neutral packaging, with particular reference to transport packaging:

“The obligation to identify the composition material shall be deemed to have been fulfilled when the producer enters such information on the transport documents accompanying the goods, or on other external means, including digital ones”.

- Packaging intended for export

“Pending co-ordination of the relevant legislation, it appears appropriate to exclude from the labelling requirement packaging destined for third countries, which must therefore be subject to the specific regulations of the country of destination. Packaging destined for third countries, in all pre-export logistics, should be accompanied by suitable documentation certifying its destination, or by transport documents and/or technical sheets showing the composition information”.

6. Penalties

Provisions are made for penalties ranging from €5,200 to €40,000 for “...anyone who places packaging **on the internal market** that does not meet the labelling requirements” (Legislative Decree 152/06, Art. 261, paragraph 3).

Therefore, even if the obligations to provide information relating to “*the nature of the packaging materials used, on the basis of Commission Decision 97/129/EC*” apply only to the packaging producers (Art. 219 paragraph 5, second part), the relevant responsibilities are shared between the supplier and the professional user of the packaging (such as, for example, the producer or importer of packaged electrical or electronic equipment), which in fact concur in the choice of labelling. **The abovementioned Interpretative Circular of the Ministry of Ecological Transition confirms on 17/05/2021 that the labelling obligation also falls on the users of the packaging.**

Table 1

ANNEX I

Numbering and abbreviation system (1) for plastics

Material	Abbreviations	Numbering
Polyethylene terephthalate	PET	1
High density polyethylene	HDPE	2
Polyvinyl chloride	PVC	3
Low density polyethylene	LDPE	4
Polypropylene	PP	5
Polystyrene	PS	6
		7
		8
		9
		10
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		18
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(1) Only capital letters shall be used.

Table 2

ANNEX II

Numbering and abbreviation system (1) for paper and fibreboard

Material	Abbreviation	Numbering
Corrugated fibreboard	PAP	20
Non-corrugated fibreboard	PAP	21
Paper	PAP	22
		23
		24
		25
		26
		27
		28
		29
		30
		31
		32
		33
		34
		35
		36
		37
		38
		39

(1) Only capital letters shall be used.