

THE PACKAGING ACT: THIS IS IMPORTANT FOR PRODUCERS AND RETAILERS

The Packaging Act (VerpackG) came into force on 1 January 2019. With the amendment of the VerpackG in July 2021, the law was adapted to current EU directives and enforcement was improved.

For producers and retailers, the VerpackG contains some important obligations, which are set out below. A producer is defined as a distributor who is the first to place packaged goods on the market in Germany on a commercial basis - i.e., this includes importers or online distributors from other countries.

REGISTRATION REQUIREMENT (§ 9)

Before placing packaged goods on to the market, producers must register with the Central Agency. Producers who do not register with the Central Agency may not offer packaged products subject to system participation for sale on the market.

The names of registered producers are published on the Central Agency's website, to ensure complete transparency for all market players.

From 1 July 2022, the obligation to register in the LUCID packaging register will apply to all packaging in Germany. Packaged goods may no longer be distributed in Germany from this date if the producer has not complied with this obligation by then.

Your new obligations under the Packaging Act for packaging not subject to scheme participation:

- Obligation to register or submit extension of registration with the Central Packaging Register, LUCID.
- Duty to provide information
- Documentation obligation
- Self-organisation obligation
- Provision of financial and organisational resources

ENGAGING THIRD PARTIES (§ 33)

Packaging distributors may engage third parties to fulfill their obligations under the Packaging Act on their behalf. However, they retain ultimate responsibility for fulfillment. They must ensure the reliability of the third parties that they engage with.

The only obligations that cannot be transferred to third parties are the aforementioned requirement to register (§ 9 Packaging Act) and the duty to submit data reports (§ 10 Packaging Act), although the latter can be prepared by a

competent third party.

DATA REPORTING REQUIREMENT (§ 19)

In addition to registering, producers must also submit information on packaging subject to scheme participation to the Central Agency in a timely manner. The same applies to any changes to the information. As a minimum, the following information must be reported:

- Registration number
- Material type and volume of the packaging subject to scheme participation
- Name of the packaging scheme that the producer has participated in
- Duration of the scheme participation contract

Unlike the declaration of completeness, this reporting requirement is not subject to a de minimis threshold. This means that even those placing small quantities on to the market must submit their data to the Central Agency, as specified above. The fact that schemes must also submit their data to the Central Agency means data comparisons are easier to perform. Thus, there is a high degree of transparency.

ZENTRALE STELLE (§§ 24-30)

The Packaging Act provides for the establishment of a Central Agency. On 28 June 2017, producers and distributors, or their related associations, officially set up the Central Agency Packaging Register (Stiftung Zentrale Stelle Verpackungsregister) – a foundation based in Osnabrück. The Central Agency is financed by schemes and operators of sector-specific solutions, based on their respective market share. The Central Agency has regulatory powers and, as an independent body, aims to increase enforcement efficiency and bolster competition. The German Environment Agency has technical oversight of the Central Agency.

The principal tasks of the Central Agency include:

- Registration of producers and publishing information online
- Receipt and review of data reported by producers and schemes
- Review of submitted declarations of completeness
- Audit of volume flow records submitted by schemes
- Development of a minimum standard for determining the recyclability of packaging (in consultation with the Environment Agency)

- Calculation of schemes' market share
- Classification of packaging that is subject to scheme participation
- Review of sector-specific solutions
- Inclusion of experts and other auditors in a register of auditors
- Updating of guidelines issued by the Central Agency

ECOLOGICAL DESIGN OF LICENCE FEES (§ 21)

Schemes are required to take ecological criteria into account when setting license fees. These so-called modulated license fees are intended to encourage producers to use packaging that consists (partially) of recycled materials or that contains a high percentage of recyclable materials. The applicable criteria are to be defined by the Central Agency, under the supervision of the Environment Agency. How exactly these modulated license fees will work has yet to be determined.

AUDIT OBLIGATIONS FOR MARKETPLACES AND FULFILLMENT SERVICE PROVIDERS (§ 7)

As of July 1, 2022, marketplaces are required to block all accounts of online retailers that do not comply with their legal obligations for packaging under the Packaging Act. The marketplaces are obliged to check whether your company is properly registered with LUCID (automatic reconciliation).

HIGHER RECYCLING TARGETS (§ 16)

Since 1 January 2019, the targets for packaging recycling have increased. These were raised again as of 1 January 2022. Packaging schemes are required to send the following minimum annual average percentage amounts of their participating volumes for processing, reuse or recycling:

MATERIAL	FROM 2019	FROM 2022
Glass	80%	90%
Paper, cardboard, carton	85%	90%
Ferrous metals	80%	90%
Aluminium	80%	90%
Beverage carton packaging	75%	80%
Other composite packaging	55%	70%
Plastics	58.5%	63%

NEW AND REVISED DEFINITIONS (§ 3)

Certain terms have been redefined in the Packaging Act:

- Packaging subject to scheme participation is defined as retail and grouped packaging filled with goods which typically ends up as waste after use by the end consumer; 100 per cent of such packaging must be licensed with a packaging scheme. Unlike under the former Packaging Ordinance, retail packaging no longer has to end up as waste with the end consumer to be classified as subject to scheme participation
- Grouped packaging shall now be treated as retail packaging
- Shipment packaging is now explicitly considered as retail packaging and may not be pre-licensed
- For more information on packaging classification, please consult the Scheme Participation Requirement Catalogue published by the Central Agency



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