

Packaging Act

– Mini Guide –

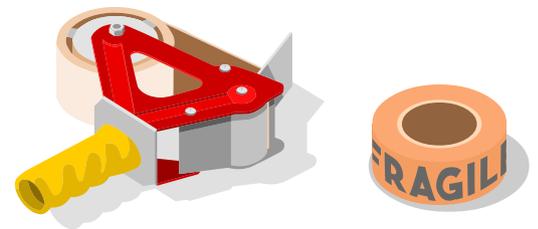
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1 | INTRODUCTION

Packaging and packaging materials cause waste. This fact poses a problem, because waste has to be disposed of, recycled and in the best case reused – for example for new packaging.

To achieve this, the Packaging Regulation (VerpackV) was created in 1991. They introduced the principle of product responsibility, whereby manufacturers and distributors of packaging were obliged to comply with regulations on the taking-back and recycling of packaging. In order to comply with these standards, the dual systems were also created, which enable those responsible to recycle the packaging generated by a private end consumer in accordance with the regulations.

Most people are probably familiar with the first dual system "The Green Dot". The objectives have not changed since the Packaging Act (VerpackG) was passed in 2017. It also continues to apply to all manufacturers and distributors who use packaging for the first time and thereby generate waste. However, the new law also covers new types of packaging and imposes new obligations on those responsible. The Packaging Act will come into force on 1 January 2019, replacing the Packaging Regulation.



2 | PACKAGING TERMS

The Packaging Act modifies and expands the packaging concept of the Packaging Regulation, which has been in force up to now, but also leaves the familiar intact. The following criteria still apply to packaging:

- » the material type is not significant
- » the packaging serves for the protection, handling, delivery or presentation of goods
- » packaging contains goods
- » they will be passed on to distributors or end users

There are also types of packaging that can be seen as special packaging:

a) Sales Packaging

Sales packaging is a unit of goods and packaging that is typically sent to the final consumer.

This includes packaging that:

- a. supports the delivery of the goods to the end user
(**service packaging**)
- b. enables the dispatch of goods to the final consumer
(**shipping packaging**)

In particular through the introduction of shipping packaging, the packaging used in online trade is now directly recorded as packaging as defined within the Packaging Act.

The most common packaging in online trade is the following:

- » cardboard boxes
- » air cushion film, packing aids, bags
- » adhesive tape, polystyrene, other filling material
- » shipping envelopes of all kinds

b) The Outer Packaging

The secondary packaging constitutes a plurality of goods and packaging which, together with the products contained therein, is typically offered to the consumer. This may involve so-called **bundle packaging**.

c) Transport Packaging

Transport packaging is the packaging that is used to facilitate the handling and transport of goods without these typically being passed on to the end consumer. It is not covered by the system participation duty.



3 | SYSTEM PARTICIPATION DUTY

The Packaging Act obliges manufacturers and distributors to fulfil licensing and registration duties if the packaging selected is "subject to system participation". This is the case if the packaging is

- » filled with goods and is
- » then typically disposed of
- » by the end
- » consumer.

This concerns the above sales and secondary packaging. Contrary to the previous Packaging Regulation, it is now sufficient that the packaging "typically" accumulates as waste at the end consumer.

Users of packaging must carry out a general assessment to determine whether the packaging could be disposed of as waste before use.

However, as in the past, it is crucial that the packaging is disposed of as waste by the end consumer, which means that packaging in the industrial or commercial sector is discarded. The exact point in time when a package accumulates as waste is not decisive. As before, however, **comparable locations** such as restaurants, hotels or cinemas are also recorded as possible locations for packaging waste. All other comparable places are listed under § 3 Abs.11 VerpackG.

a) Duty to Participate in a Dual System

If there is packaging that is subject to system participation, the manufacturers and distributors are obliged to take part in a dual

system and to license the packaging used.

A manufacturer within the meaning of the Act is a subgroup of distributors. According to the Packaging Act, a distributor is to be regarded as a manufacturer if it

- » is being placed on the market for the first time, and
- » commercially in traffic and/or
- » is within the scope of the application of the law.

According to this, online retailers are to be regarded as manufacturers if the conditions apply to them.

The decisive factor here is whether filled packaging can be replaced when it is first placed on the market.

As a rule, this has to do with the "filler" of the packaging.

Conversely, this means: if packaged goods are directly forwarded by the manufacturer without further packaging, no participation is necessary. Manufacturers of packaging sent from abroad are also subject to full licensing after the wording has been extended.

Used packaging can be used without re-licensing, if it has already been used before, and is still being licensed for use in a dual system.

b) Exceptions from the Duty to Participate

When service packaging is used as a special type of Sales packaging, this duty can be pre-assigned to pre-distribution. Typical examples of service packaging are:

- » bakery bags
- » butcher's paper
- » coffee-to-go-cups
- » bags for fruits and vegetables
- » cling film or aluminium foil

In this case, the packaging can already be purchased pre-licensed. Mostly, a pre-distributor of the service packaging takes care of licensing, e.g. the producer or the wholesale trader. However, pre-licensing should be documented by invoice or contract.

Shipping packages are clearly to be classified as sales packaging and not as service packaging.

Furthermore, reusable packaging, one-way packaging and transport packaging are generally not to be regarded as compulsory system participation. Returnable packaging is intended to be reused for the same purpose after use. The so-called disposable packaging is also not covered as long as it is subject to the mandatory deposit.

c) Industry Solutions

A further exception is when manufacturers choose the so-called industry solution and use the packaging free of charge, taking care of the recycling accordingly. This must be reported to the Central Packaging Registry and certified by an expert before the start of the industry solution.

Manufacturers not participating in a dual system are prohibited from placing packaging on the market.

d) Dual Systems

The first dual system was founded as the "Dual System Germany – The Green Dot". In the meantime, there are nine licensed providers of dual systems in Germany. As a result of the changed legal situation, the duty to label consumer packaging with the green dot, which had existed until then, also ceased to apply in 2009.

Manufacturers must participate in a dual system and provide the following information:

- » type of material
- » mass of the packaging to be included
- » registration number

The participation can either be personally inspected by the retailer or by an authorised third party. However, the Packaging Act obliges the dual systems to promote packaging and materials that can be recycled to the highest possible percentage during licensing, thereby creating financial incentives for this. Concrete examples have not yet been mentioned. In addition, dual systems must be subject to a reporting duty to the Stiftung Zentrale Stelle (Central Office Registry) under the Packaging Act: information on manufacturers and the reported material type and mass shall be transmitted for comparison.

From 1 January 2019, participation will only be possible with the registration number issued by the Stiftung Zentrale Stelle Verpackungsregister

e) Overview of the Dual System (August 2018)

- » BellandVision GmbH
- » Der Grüne Punkt – Duales System Deutschland GmbH
- » INTERSEROH Dienstleistungs GmbH
- » Landbell AG für Rückhol-Systeme
- » NOVENTIZ Dual GmbH
- » Reclay Systems GmbH
- » RKD Recycling Kontor Dual GmbH & Co. KG
- » Veolia Umweltservice Dual GmbH
- » Zentek GmbH & Co. KG

4. THE DUTY TO REGISTER WITH THE STIFTUNG ZENTRALE STELLE VERPACKUNGSREGISTER (CENTRAL PACKAGING REGISTRY)

The licensing duty with a dual system triggers a registration duty with the newly created Stiftung Zentrale Stelle Verpackungsregister.

Registration must take place before packaging is placed on the market.

The following information must be provided during registration:

- » name, address and contact details
- » one authorised representative
- » national identification number of the manufacturer, including the relevant tax identification number
- » brand name under which the manufacturer places the system-related packaging on the market
- » explanation that participation in a dual system or industry solution is taking place
- » declaration that all information is true
- » the first registration with the Stiftung Zentrale Stelle Verpackungsregister is free of charge. Registration is purely electronic and can therefore be carried out using a computer/tablet or smartphone.

The registration must be done by the retailer himself. The assignment of third parties is not permitted.

After registration, retailers receive their personal registration number. Without this, participation in a dual system isn't possible.

Without proper registration, the placing on the market of packaging is not permitted.

a) Data Reporting Duty

In addition to registration, manufacturers and registered representatives are also obliged to forward all information relating to packaging to the Central Packaging Registry. This concerns:

- » registration number
- » » type of material and dimensions of packaging
- » » name of the dual system of participation
- » » period of investment

The data must be transmitted immediately, i.e. without further delay. The data report must be made in person, but can be made electronically.

b) Letter of Completeness

In the event that manufacturers are required to participate in systemic packaging to the extent of

- » more than 80,000 kilograms of glass
- » more than 50,000 kilograms of cardboard, paper and cardboard and
- » more than 30,000 kilograms of the remaining materials

they are obliged to annually submit to 15. The customer shall send the Central Packaging Registry a declaration of completeness in accordance with § 11 VerpackG by 31 May of the following year. This declaration must be certified, audited and confirmed by a registered expert, tax consultant or auditor. The transmission has to take place electronically. In special cases – The Central Packaging Registry may also impose a levy on manufacturers that don't exceed the maximum limit set.

For most online retailers, a declaration of completeness should not be necessary due to the exemption.

5. THE CENTRAL PACKAGING REGISTRY

The newly created registry was created on 15 May 2017 for the conversion of the VerpackG with its seat in Osnabrück. As an authority, it is entrusted with sovereign tasks and issues administrative acts.

All tasks of the ZSVR are listed in § 26 VerpackG, these include, among other things:

- » assumption of registrations,
- » assignment of the registration number,
- » publication of registrations on the Internet,
- » checking reports about packaging mass,
- » notification of the state authorities about violations.

The Central Packaging Registry (ZSVR) maintains its own online presence, which can be reached under:

[https://www.verpackungsregister.org/?](https://www.verpackungsregister.org/)

It also serves as a contact point for all aspects on packaging.

6. THE LUCID DATABANK

For the first time, the VerpackG introduces an online database which can be viewed free of charge by everyone and contains all registrations. This database contains the following data:

- » registration number,
- » registration date,
- » name, address and contact details,
- » brand name under which the manufacturer places the system-related
- » packaging on the market.

Registrations will either be permitted in the period until 2019 during the associated pre-registration, or subsequently after successful registration.



7. INFRINGEMENTS

Participation in a dual system as well as a corresponding registration are defined by the Packaging Act as a statutory duty. An offence against it is considered a misdemeanour. A fine of up to €100,000 per case can be imposed for a registration that has not been completed. Non-participation in a dual system can be punished with a fine of up to €200,000.

In addition, the Act shall serve the purpose of guaranteeing fair competition. Thus, competing companies can also check through the database whether a retailer has complied with the necessary registration.

Even at the time of the Packaging Regulation, courts had confirmed that a violation of the licensing duty constituted a violation of the law against unfair competition. Violators can therefore be warned under competition law.

The burden of demonstrating that a licence already exists lies with the distributors who place sales packaging on the market. That is: retailers must always be able to prove that supposedly pre-licensed packaging, in its entirety (including bubble wrap and/or adhesive tape, for example), has actually already been licensed. If they are not able to prove this properly, they themselves are obliged to carry out the licensing.

In cases involving drop-shipping, are retailers still required to register?

No, nothing else can apply but the duty to participate in the system. If the online retailer does not come into contact with the packaging, the duty to register does not apply to him, but to the manufacturer as the first distributor.

In which cases does a manufacturer or retailer not have to participate in a dual system?

If packaging is used that has already been registered and is therefore not placed on the market for the first time, the duty to participate in the system is waived.

However, does the duty to register only apply for certain quantities?

No. The duty to register is independent of the quantity placed on the market. This means that anyone who places packaging on the market for the first time and on a commercial basis must register.

What about used shipping materials? Are they subject to registration?

If they are not yet registered, yes. Used shipping materials can also be placed on the market for the first time and thus be disposed of as waste by the end consumer.

Is the registration subject to a fee?

According to the Central Packaging Registry, registration is free of charge. Registration costs are covered by systems and industry solutions.

What are the consequences of violations against the Packaging Act?

In the case of non-registration or distribution of goods whose manufacturer has not registered the trademarks distributed, a fine of up to €100,000 may be imposed. In the event of non-participation in a system, a fine of up to €200,000 is due.

Does a notice that the shop has registered with the Central Packaging Registry have to be visible in the online shop?

No, there is no obligation for retailers to provide information in this regard. The registration is noted online on the LUCID platform and is transparent and can be viewed by anyone.

What should be done if it is not clear whether the packaging is “typically” generated as waste?

The Central Packaging Registry has the competence to decide on request whether packaging is to be classified as subject to system participation. This can be put online at: <https://www.verpackungsregister.org/>

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