

FAQ: When are retrospective deductions permitted?

Retrospective deductions from packaging volumes that have already participated in a system and have been placed onto the German market are permissible ...

1. ... due to 'damage or unsaleability' pursuant to section 7 (3) VerpackG (Packaging Act) if the packaging cannot be transferred to the final consumer due to damage or unsaleability and if the producer has taken the packaging back and transferred it for recovery as per section 16 (5) VerpackG. Return to the producer and subsequent recovery must be documented in a verifiable form in every instance.

If this is the case, the respective packaging is no longer considered to have been placed on the market once the participation fees have been refunded. The individual documentation must be filed in the LUCID Packaging Register by the producer upon request from the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR).

A legal right to a refund of paid participation fees from the system arises after a deduction pursuant to section 7 (3) VerpackG. The German government deliberately prescribed narrow circumstances with strict requirements in the Verpackungsgesetz (Packaging Act) because this issue was a reason for significant under-participation in the past.

2. ... subject to strict conditions, where a retailer/redistributor undertakes an 'independent' and/or 'unplanned' export pursuant to section 12 no. 3 VerpackG if evidence can be produced that the packaging has not been transferred to a final distributor in Germany and/or the jurisdiction of the Verpackungsgesetz. In the case of these so-called 'retail exports', a retailer/redistributor exports packaging subject to system participation that has been placed onto the market by a producer in Germany where the producer did not plan for the packaging to be exported.

This packaging became subject to system participation the first time it was placed onto the German market by the producer. The producer can only retrospectively deduct the packaging that has actually been exported from its system participation volume if the fact of the export can be clearly evidenced in each individual case by the initial distributor / producer.

Relevant evidence includes, for example, corresponding delivery documentation from the producer to the retailer and related export certificates (customs papers, invoices and accompanying documents) that identify the retailer as the exporter.

A legal right to a refund, specifically from the system, does not arise in such a case, however. Corresponding contractual agreements of all the parties are a strict requirement in addition to verifiable documentation of each individual case.

Deductions of so-called 'retail returns', i.e. returns of packaging subject to system participation for surplus goods that the producer/distributor accepts back from a retailer are prohibited. The packaging became subject to system participation the first time it was placed onto the German market by the producer. According to the wording of the Verpackungsgesetz, the framework and the clear explanatory memorandum, retrospective deductions for packaging once it has been placed onto the German market are only permissible under the strict conditions listed.

'Retail returns' therefore cannot result in deductions from the packaging volume subject to system participation and are accordingly irrelevant for the purposes of data reports and declarations of completeness. 'Retail returns' can be placed onto the market again without issue, for example by giving them to another retailer. Because the packaging has already participated in a system, system participation does not need to be undertaken again.

These cases must not be confused with the following circumstances:

1. In the case of **genuine own brands** within the meaning of section 3 (9) VerpackG, the placement onto the German market only occurs by the proprietor of the own brand / ordering party. Retrospective deductions in the relationship between the ordering party and the agent before the packaging is placed onto the market do not have any external relevance under packaging law. The packaging only becomes subject to system participation once it is placed onto the German market by the proprietor of the own brand / ordering party.
2. **Planned exports** by the producer or by downstream retailers are, pursuant to section 12 no. 3 VerpackG, not subject to system participation from the outset if it has always been clear that the packaging would not be handed over to a final consumer in Germany. In this case, however, it must be clearly identifiable at the time it is placed onto the market for the first time from external circumstances, such as the design of the packaging or the accompanying documentation, that the relevant packaging is exclusively intended for export. Corresponding evidence includes, for example, customs papers or invoices and accompanying documentation that expressly states 'export packaging'.

In the event that packaging subject to system participation, contrary to its original designation, is handed over to a final consumer in Germany, system participation must be undertaken without delay.