

When are retrospective deductions permitted?

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

- 1... due to 'damage or unsaleability' pursuant to section 7 (3) VerpackG (Packaging Act). This applies if the packaging cannot be handed over to the final consumer because it is damaged or cannot be sold and if the producer has taken the packaging back and transferred it for recovery as per section 16 (5) VerpackG. Return and recovery must always be clearly documented.

If these conditions are met and the system participation fees have been refunded, the packaging is no longer considered to have been placed on the market. The producer must file the individual documentation in the LUCID Packaging Register if the ZSVR requests it. A deduction pursuant to section 7 (3) VerpackG gives rise to a legal right to a refund of paid participation fees. The German government deliberately set strict requirements in the Verpackungsgesetz because this issue had previously contributed to significant under-participation.

- 2... under strict conditions, where a retailer or redistributor undertakes an 'independent' and/or 'unplanned' export pursuant to section 12 no. 1 VerpackG and provides evidence that the packaging has not been handed over to a final distributor in Germany, which is where the Verpackungsgesetz applies.

In the case of these 'retail exports', a retailer or redistributor exports packaging subject to system participation that was placed on the German market by a producer without that producer having planned for the packaging to be exported. This packaging became subject to system participation when first placed on the German market. The producer can only retrospectively deduct packaging that was actually exported from its system participation volume if the export can be clearly evidenced in each individual case by the initial distributor or producer. Evidence includes delivery documentation from the producer to the retailer and export certificates (customs papers, invoices and accompanying documents) identifying the retailer as exporter. Even if all conditions are met, there is no legal right to a refund, specifically not from the system. In addition to verifiable documentation, appropriate contractual agreements are required.

Deductions of 'retail returns', i.e. returns of packaging subject to system participation for surplus goods that the producer or distributor takes back from a retailer are prohibited.

The packaging became subject to system participation when it was first placed on the German market by the producer. According to the wording of the Verpackungsgesetz, the framework and the clear explanatory memorandum, retrospective deductions are only permissible under the strict conditions listed above once they packaging has been placed on the German market.

‘Retail returns’ therefore cannot result in deductions from the packaging volume subject to system participation and are irrelevant for data reports and declarations of completeness. ‘Retail returns’ can be placed on the market again without issue, for example by giving them to another retailer. Because the packaging has already participated with a system, there is no need to undertake system participation again.

These cases must not be confused with the following situations:

1. In the case of genuine own brands within the meaning of section 3 (9) VerpackG, packaging is only placed on the German market by the proprietor of the own brand or ordering party.

Retrospective deductions between the ordering party and the agent before the packaging is placed on the market have no relevance under packaging law. The obligation to participate the packaging with a system arises only when the packaging is placed on the German market by the proprietor of the own brand or ordering party.

2. Planned exports by the producer or by downstream retailers are, pursuant to section 12 (1) VerpackG, not subject to system participation from the outset if it is clear from the beginning that the packaging will not be handed over to final consumers in Germany.

In this case, however, external factors – such as the packaging design or the accompanying documentation – must make it clearly identifiable at the time the packaging is first placed on the market that it is exclusively intended for export. Evidence includes customs papers or invoices and accompanying documentation that expressly states ‘export packaging’.

If that packaging subject to system participation is handed over to a final consumer in Germany contrary to its intended use, system participation must be undertaken without delay.

Where can I find further information?

[Information about system participation ↗](#)

[Knowledge base on imports ↗](#)

Do you need IT-related support or do you have general questions regarding the obligations under German packaging law?

Contact our support team at +49 541 34310555

Monday to Friday from 9:00 to 17:00 CET (public holidays in Lower Saxony excepted)