Garden centre

Osnabrück, 19 March 2020

What is the reason for our case report?

A garden centre is a producer of a significant amount of packaging subject to system participation. Having exceeded the thresholds set out in section 11 VerpackG (Packaging Act), the garden centre is amongst the 5,000 largest distributors of packaging in Germany.

The vast majority of retail packaging for plants and perennials accumulates with private final consumers. It is subject to system participation according to the system participation requirement catalogue published by the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR); the system participation requirement applies up to the stated pot diameters (product sheet 02-060-0110).

The majority of retail packaging for plant soil, peat and bark mulch accumulates with private final consumers. It is subject to system participation according to the system participation requirement catalogue in quantities up to 1,000 kg (product sheet 06 000-0050).

Shipment packaging of any kind for the aforementioned products is subject to system participation (regardless of delineation criteria).

But even without consulting the system participation requirement catalogue, it can be concluded that the vast majority of the relevant packaging accumulates as waste with private final consumers and so was subject to system participation under section 6 of the Verpackungsverordung (Packaging Ordinance) for the 2018 reference year.

As a producer, the garden centre is required to register, undertake system participation and report data to the ZSVR in addition to filing an annual declaration of completeness, cf. sections 7, 9, 10 and 11 VerpackG.

What happened?

Registration

The garden centre had registered with the ZSVR's LUCID Packaging Register as a producer within the meaning of the Verpackungsgesetz (Packaging Act) with three own brands. Packaging was filled by a supplier on the garden centre's behalf, labelled with the garden centre's own brand names and placed on the German market without reference to the supplier. The garden centre is therefore the producer of the own brands under section 3 (9) VerpackG. The registration requirement has been in place since 1 January 2019.

System participation

Despite being the producer of the own brand packaging, the garden centre did not participate its packaging volumes with one or more system(s) either itself or via an appointed third party for the 2018 reference year.

The garden centre did not submit intra-year data reports under section 10 VerpackG. A year-end volume report for the volumes that participated with systems in 2018 should have been submitted to the ZSVR by no later than 2019 as per section 10 VerpackG. That did not occur.

Declaration of completeness

The garden centre was required to file a declaration of completeness in LUCID for the 2018 reference year because the packaging volumes it placed on the German market exceeded the thresholds. However, it had not filed a declaration of completeness by the statutory filing date (15 May 2019). The ZSVR requested that the garden centre file the missing declaration of completeness for the 2018 reference year to clarify any potential under-participation.

What are the grounds to suspect breaches of statutory packaging law obligations that are subject to a fine?

System participation

The garden centre did not participate its packaging volumes for the 2018 reference year contrary to section 6 (1) VerpackV (Packaging Ordinance). There are grounds to suspect an administrative offence, cf. section 69 (1) no. 8 KrWG (Circular Economy Act) in conjunction with section 15 (1) no. 6 VerpackV. This is punishable with a fine of up to 100,000 euros.

Distribution ban

Without participation, the garden centre was not permitted to place these packaging volumes on the German market in 2018 (section 6 (1) VerpackV). There are specific grounds to suspect an administrative offence, cf. section 69 (1) no. 8 KrWG in conjunction with section 15 (1) no. 7 VerpackV. This is punishable with a fine of up to 100,000 euros.

Declaration of completeness

Only after the ZSVR requested that it do so did the garden centre file the missing declaration of completeness for the packaging subject to system participation placed on the German market in 2018. The declaration of completeness was not only filed late, but it was also inaccurate because the own brands were not included in the garden centre's packaging volumes subject to system participation. This constitutes a breach of section 11 VerpackG and there are specific grounds to suspect an administrative offence, cf. section 34 (1) no. 11 VerpackG. This is punishable with a fine of up to 100,000 euros.

What are the repercussions?

The ZSVR informed the responsible state authority that there were specific grounds to suspect that the garden centre had committed administrative offences. Possible repercussions of such administrative offences include fines, an order for subsequent participation (where the garden centre does not participate the volumes via supplementary volume reports for 2018) and confiscation of profits.

ZSVR is investigating whether the garden centre fulfilled its statutory packaging obligations in full from the 2019 reference year onwards.

Read more

More detailed information about how to use the system participation requirement catalogue ↗ and about the obligations under the Verpackungsgesetz ↗, in particular about declarations of completeness ↗, can be found on our website.