

Incorrect system participation leads to subsequent participation for three years – producer faces millions in costs

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What is the reason for our case report?

In addition to the obligation to register with the LUCID Packaging Register, companies placing packaging subject to system participation on the German market for the first time must also fulfil other obligations under packaging law.

In particular, packaging law requires companies to finance the recycling of packaging in which they distribute their products. This obligation must be met before placing packaged goods (or making them available) on the market. To do so, companies must participate the relevant packaging with one or more system operators that provide collection, sorting and recycling services in Germany. Incorrect system participation is treated as though no system participation was undertaken at all. Companies must also ensure that the information (reported to a system as part of their system participation) regarding material type and mass of the packaging to be participated is correct.

What happened?

A company from the pharmaceutical sector failed to fully comply with the system participation requirement over a period of three years. The company negligently indicated the wrong material type for some of its packaging. Instead of correctly reporting composite glass packaging, which consists of different material types, under 'other composite packaging', the producer deliberately and incorrectly classified and participated it as 'glass' – a material type that is less costly in terms of system participation. This led to sizeable cost savings for the company in question.

The case came to the attention of the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR) during its audit of the company's declarations of completeness for several years.

What are the repercussions?

The ZSVR contacted the company as part of a hearing and presented it with the findings of fact. In particular, the ZSVR pointed out that the glass composite packaging should have been participated as 'other composite packaging' for the three years under review. The company responded by stating its intention to correctly report a total of 5,000 tonnes of glass composite packaging for subsequent participation.

As the responsible authority for dealing with administrative offences, the relevant state enforcement authority was informed by the ZSVR about the incorrect system participation. The company's cooperative behaviour was given due consideration by the enforcement authority in the fining procedure, leading to a lower fine.

The subsequent participation – which has now been undertaken – led to costs in the low single-digit million euro range. Subsequent participation regularly incurs significant additional costs compared to correctly participating packaging before it is placed on the market. Companies are therefore well advised to ensure that their system participation is free of any errors. Moreover, enforcement authorities have the power to impose heavy fines in addition to subsequent participation.

This case highlights just how important it is to ensure that packaging subject to system participation is fully participated from the beginning, with correct information regarding material type and mass.

Read more

Further information can be found on the ZSVR website [↗](#), in particular regarding packaging law obligations [↗](#) and system participation [↗](#).