

PRESS RELEASE

Decision on reusable shopping bags with implications for every sector – case headed to Federal Administrative Court

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The Cologne Administrative Court has dismissed the claim brought by a grocery retail company contesting a classification decision made by the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR). The court of first instance confirmed that reusable shopping bags constitute packaging subject to system participation. It is irrelevant what materials they are made of, what companies sell them, where they are sold and how purchasers use them besides taking away goods they have bought.

The decision has far-reaching implications for companies from virtually every sector, extending past grocery retailers to drug stores, home improvement, garden and flat pack furniture stores, animal supply stores and toy shops. Ultimately it means that anyone offering customers reusable shopping bags has an obligation to finance the recycling of this packaging. This decision is pending a conclusive ruling from the Federal Administrative Court.

A company within the grocery retail sector brought a claim contesting a classification decision made by the ZSVR. The company argued that reusable shopping bags did not constitute packaging because they were products. The company's submissions to the court included that customers could use the shopping bags multiple times and for other purposes, making them multi-purpose bags.

ZSVR's classification stands

The court disagreed, issuing a first instance confirmation of the ZSVR's classification. The ZSVR had classified the reusable shopping bag as service packaging for the purposes of the Verpackungsgesetz (Packaging Act), making it subject to system participation. The Act states that packaging should be classified abstractly based on its 'typical' use. The competent court accordingly classed the bag as packaging. The bags are typically bought at checkout registers, where they are filled with goods by customers to take their shopping home.

Reusable shopping bags of any kind implicated

The court made it clear that it is irrelevant whether the company sells an empty reusable shopping bag, provides it free of charge or actually fills it at the point of sale in individual cases. It is equally irrelevant whether customers are offered the bag at the checkout register or elsewhere in the store or if customers buy them with the express intention of reusing them. Any potential subsequent use as a bag for sporting goods, deposit bottles or transporting files does not factor into the classification.

Far-reaching repercussions for companies in every sector

The court granted a 'leapfrog appeal' request; the appeal proceedings are already pending. This mechanism allows the first instance decision to be reviewed directly by the court of the last instance, the Federal Administrative Court. If the Federal Administrative Court confirms the lower court's decision, it will be settled and legally binding law that reusable shopping bags constitute packaging subject to system participation. That means that every company that provides these shopping bags to its customers must finance the recycling of the bags – in every sector.

That is why companies are being advised to take note of the first instance decision now and, if they have not already done so since the Verpackungsgesetz entered into force in 2019, participate their reusable shopping bags with a system.

The anonymised written reasons for the judgment can be found here: <https://www.verpackungsregister.org/en/foundation-authority/court-decision>.

Zentrale Verpackungsregister (Central Agency Packaging Register – ZSVR)

Since the Verpackungsgesetz (Packaging Act) entered into force in 2019, the ZSVR has served as an entrusted body to foster greater transparency and control in the packaging recycling market. To this end, the ZSVR maintains a register of all industrial and commercial companies under legal obligation, reconciles volumes between producers and systems, and provides for more recycling-friendly design by setting standards. Lawyer Gunda Rachut is the Chair of the Foundation.

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