

PRESS RELEASE

Catalogue of packaging subject to system participation confirmed in the court of first instance, setting precedent and sending a signal

Osnabrück, 20 March 2025

The Osnabrück Administrative Court has dismissed multiple claims against classification decisions made by the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR). The claimants contended that the system participation requirement did not apply to their packaging, which included packaging for food, construction chemical products and two consumer goods. The court of first instance confirmed the ZSVR’s classification undertaken using the catalogue’s generalised market assessment.

At issue were a 9-kg bucket of mayonnaise and various containers for paint, lacquer and thinner in packaging like buckets and cans. The ZSVR had classified the mayonnaise bucket as being subject to system participation and had classified the construction chemistry packaging as either subject or not subject to system participation depending on quantity. In both cases, the companies disputed their packaging’s classification.

There was no doubt that the buckets and cans for both product groups constituted retail packaging. What required clarification was whether this packaging ‘typically’, as set out in the Verpackungsgesetz (Packaging Act), i.e. mostly, accumulated as waste with private final consumers, meaning that the recycling of this packaging needed to be financed. The ZSVR uses its system participation requirement catalogue when deciding whether packaging is subject to system participation. The catalogue is an administrative regulation that follows a generalised market approach depending on whether an article of packaging typically accumulates as waste with private final consumers after use. The key is not to assess a particular article of packaging from a specific company, but rather all comparable packaging throughout Germany, i.e. all 9-kg buckets of mayonnaise.

The Osnabrück Administrative Court confirmed that the generalised approach using objective assessment criteria is appropriate. It rejected the producer-centric individualised approach.

Dismissals reinforce the ZSVR’s classification decisions and catalogue

The dismissals and first instance confirmation of the catalogue make it clear that the system participation requirement classifications are not based on any individual producer’s distribution channels. The only thing that matters is the overall market assessment.

The Osnabrück Administrative Court also supported the ZSVR's classification decisions in two other proceedings, reinforcing the official decision-making process of both the ZSVR and of the German Environment Agency as a reviewing authority for appeals. These matters concerned the clarification of whether glasses cases and dummy cases constituted packaging in the first place, which the court subsequently confirmed. As a consequence, the cases are clearly packaging subject to system participation because they typically accumulate as waste with private final consumers.

Classifying packaging correctly and ensuring compliance

The judgments are not yet legally binding. The case will likely be heard by the Lüneburg Higher Administrative Court as the appellate court. Regardless, the ZSVR urges companies to follow the system participation requirement catalogue. The system participation requirement exists entirely independently from the ZSVR's classification decisions and remains an obligation that companies are responsible for fulfilling, even where proceedings are ongoing. Companies required to file a declaration of completeness must expressly stipulate and quantify any deviations from the catalogue. Any failure to do so is at the company's or auditor's peril, especially given the heightened compliance risk in the wake of recent legal developments.

The current judgments confirm the validity and robustness of the catalogue's generalised market assessment. Those who adopt this approach ensure compliance for their company and contribute to a level playing field. The time for holdouts to act is now. The catalogue database can be accessed by anyone on the ZSVR's website.

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

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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