

Information regarding the treatment of the amended definition of composite in the context of auditing declarations of completeness as per 25 February 2021

Upon the 29 October 2020 entry into force of the amended Kreislaufwirtschaftsgesetz (Circular Economy Act) dated 23 October 2020 (BGBl. I p. 2232), the definition of composite in section 3 (5) VerpackG (Packaging Act) was changed to harmonise it with the definition of 'composite packaging' introduced into the Packaging and Packaging Waste Directive 94/62/EC by Directive (EU) 2018/852. As a result, the exception in the definition of composite that had existed in section 3 (5) VerpackG for packaging where the main material component exceeded 95 per cent of the total mass was removed. The effect of the prior definition of composite was that packaging with a material component in excess of 95 per cent of the total mass was not treated as composite packaging within the meaning of the Verpackungsgesetz (Packaging Act) and had to be attributed according to its main material type in the context of producer data reports, declarations of completeness and the volume flow records (the so-called "95/5 rule").

According to the current governmental draft of the law to implement the requirements of the Single-Use Plastics Directive and the Waste Framework Directive in the Verpackungsgesetz and other laws¹, section 16 (3) VerpackG will be amended with effect from 3 July 2021 so that composite packaging transferred for recovery must be attributed entirely to the rate of the main material type if the main material component exceeds 95 per cent of the total mass of the composite packaging. For information in declarations of completeness, section 11 (2) will be expanded so that composite packaging that has been recovered pursuant to section 16 (3) must be attributed according to its main material type. Section 10 (1) will also be expanded accordingly for data reports. As such, the law as it stood prior to 29 October 2020 will be restored vis-à-vis producer data reports, information in declarations of completeness and systems' volume flow records.

The declaration of completeness audit guidelines, version 6 November 2020, state under "B.5: audit area 5, master data maintenance within the company" that section 3 (5) VerpackG sets out three conditions. The third condition set out there

"No single material type exceeds 95%. In other words, this means that if a material mass constitutes more than 95%, then the packaging cannot be a composite."

has not applied since 29 October 2020. It is likely that this condition will once again apply for declarations of completeness starting 3 July 2021, even if it is not set out in section 3 (5) VerpackG if section 11 (2) is amended accordingly in conjunction with section 16 (3) VerpackG.

The Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR), in agreement with the German Environment Agency (Umweltbundesamt) and German Federal Cartel Office (Bundeskartellamt), decided against an intra-year revision of the audit guidelines for the following reasons:

- It concerns a statement in the audit guidelines' explanatory notes.
- The Verpackungsgesetz supersedes the audit guidelines.

¹ <https://www.bmu.de/gesetz/entwurf-eines-gesetzes-zur-umsetzung-von-vorgaben-der-einwegkunststoffrichtlinie-und-der-abfallrahme/>.

- The law will only change temporarily.
- It is the understanding of the ZSVR Advisory Board that the legislator is not effecting practical changes with the amended definition of composite, but was instead intending to bring the wording of the German law in line with European legislation. It is therefore the position of the Advisory Board and consistent with the legislative understanding of customary ecological efficacy of recovery undertaken in connection with the primary material type (Bundestag printed paper 19/22612, p. 24) that no practical change should take place in how rates are calculated in the volume flow record (refer to our information dated 17 December 2020, available in German under <https://www.verpackungsregister.org/information-orientierung/neuigkeiten-presse/aktuelles/detail-ansicht-newseintraege/news/information-zur-aenderung-der-verbunddefinition-im-verpackg-12-2020>).
- It is the ZSVR's view that the Advisory Board's recommendation extends equally to issues relating to delineating material types in the context of the system participation of packaging.

We intend to update the conditions relating to the definition of composite in the audit guidelines the next time they are revised. The non-application of the third condition set out in audit area B.5 does not constitute a breach of the audit guidelines for the 29 October 2020–3 July 2021 reference period (provided that the relevant amended version of the Verpackungsgesetz enters into force). The first two conditions set out in audit area B.5 must still be fulfilled.
