



April 2022

1

What does 'extended producer responsibility' (EPR) mean? What effect does it have in Germany?

In Europe, packaging is subject to so-called extended producer responsibility (EPR), which is a term used around the world. Producers of packaged goods must ensure that their packaging harms the environment as little as possible. In practical terms, they are responsible for the prevention, reuse and recycling of their packaging. Everyone who fills packaging subject to system participation (retail, grouped or shipment packaging) with goods and sells it in Germany has to enter into a system participation agreement with one or more system(s). Through this contract, companies under obligation finance the recovery and recycling of their packaging. This principle is called 'system participation' and it applies to packaging that typically accumulates as waste with private final consumers.

2

What are the systems and what is their role?

The systems carry out recovery and recycling services nationwide in Germany. Private final consumers dispose of their packaging waste in yellow bags/bins, paper bins and paper/glass containers after use. The packaging is then sorted into different groups at sorting and recycling plants where as much high-quality material is recovered as possible. Each party under obligation is free to decide which system(s) they will enter into an agreement with. In Germany, this market is organised around principles of competition.

As such, there are different service providers. A list including addresses, contact people and telephone numbers can be found at www.verpackungsregister.org/en/systems-overview

3

The Zentrale Stelle Verpackungsregister – what is it and what does it do?

Since the Verpackungsgesetz (Packaging Act) entered into force, the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR) has served as a federal authority to foster greater transparency and control in packaging recycling. As part of this, one of its responsibilities is managing the Packaging Register. All the industrial and retail companies under legal obligation have to register there. The ZSVR also compares producers' and systems' packaging volumes and publishes standards that serve to promote recycling-friendly design. More information about the ZSVR and its other duties can be found at www.verpackungsregister.org.

4

What has changed for electronic marketplaces under the amended Verpackungsgesetz (Packaging Act)? What will the impact be for online retailers and sellers who sell their goods on electronic marketplaces?

From 1 July 2022, electronic marketplaces have new obligations. They can only offer goods on their sales channels from online retailers who comply with their obligations under packaging law. To avoid a distribution ban and fines, retailers and sellers who place packaging subject to system participation on the German market must

→ register with the LUCID Packaging Register,

- enter into a so-called system participation agreement with one or more system(s) and
- submit regular data reports about their packaging volumes to the systems and the LUCID Packaging Register.

In the '3 steps to fulfilling registration and system participation requirements' guideline, online retailers can find concrete tips about implementing these requirements.

From 1 July 2022, there are also certain legal obligations for many online retailers in relation to packaging that is not subject to system participation. The answer to question 6 sets out what they are and how to fulfil them.

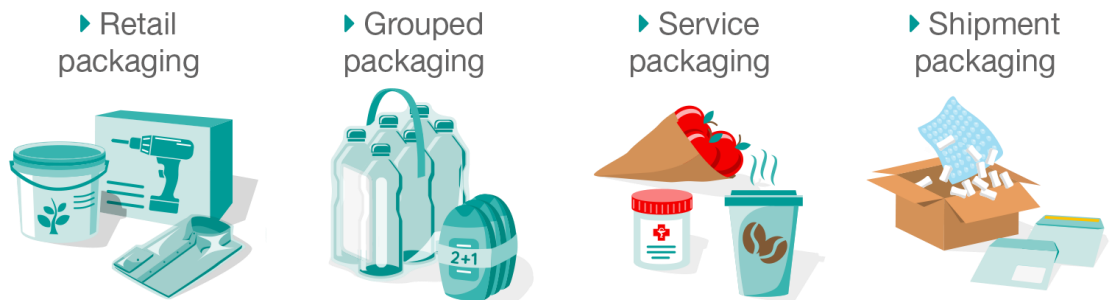
5

What packaging is subject to system participation in online retail?

Online retailers send goods to their customers in shipment packaging. It is (almost always) subject to system participation. The same applies for **retail and grouped packaging**.

+ Packaging subject to system participation

Packaging that typically accumulates as waste with private final consumers:



You can use the system participation requirement catalogue at www.verpackungsregister.org/en/catalogue-search to work out whether an article of packaging is or is not subject to system participation.

Online retailers should also check whether they have a duty in relation to the product packaging. That may occur, for example, if they import their products themselves.

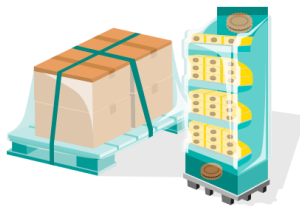
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What new obligations will apply starting 1 July 2022?

The requirement to register for packaging that is not subject to system participation starts on 1 July 2022. Everyone who places packaged goods on the German market has to register in the LUCID Packaging Register before that date, regardless of packaging type.

+ Packaging not subject to system participation

▶ Transport packaging



▶ Reusable packaging



▶ Single-use beverage packaging subject to deposit



▶ Retail and grouped packaging that does not typically accumulate as waste with private final consumers after use



▶ Retail packaging for hazardous contents, etc.



Depending on their particular situation, companies have the following obligations:

- a. **If you have already registered in the LUCID Packaging Register:** if you place packaging subject to system participation as well as packaging that is not subject to system participation on the German market, you must update your registration in the LUCID Packaging Register by 1 July 2022 and list your individual types of packaging and their brand names there.
- b. **If you have not yet registered in the LUCID Packaging Register:** then you need to register for the first time in the LUCID Packaging Register by 1 July 2022 and indicate your types of packaging and their brand names during the registration process. Please note: anyone who is currently placing packaging subject to system participation on the German market but is not yet registered is committing an administrative offence. The requirements for packaging subject to system participation and how to fulfil each of them can be found in the answer to question 3.

The **new registration process** that includes listing packaging types **will begin on 5 May 2022**. For packaging that is not subject to system participation, you do not need to enter into a system participation agreement or submit data reports about packaging volumes. However, you do need to fulfil recovery, return and documentation requirements under section 15 VerpackG (Packaging Act).

7

Is the registration requirement only triggered by a certain volume of packaging?

100 grams or 100 tonnes? Regarding the question of whether a producer of packaged goods needs to register in the LUCID Packaging Register, packaging volume does not matter. There is no threshold that triggers the registration requirement.

However, companies with packaging volumes above a certain threshold do have to submit a declaration of completeness. A registered auditor or expert has to check its accuracy. More information can be found in the FAQ area on the website of the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR) [under number 9 \('What is the process for submitting a declaration of completeness?'\)](#)

8

What special considerations apply for international companies without a branch in Germany?

There is a special provision for companies without a branch in Germany. You can appoint an authorised representative located in Germany to fulfil your packaging law obligations on your behalf in their own name. There is one exception, however: registration is a personal duty that the original party under obligation (e. g. the online retailer without a branch in Germany) has to fulfil. The authorised representative cannot do so on their behalf. More information about this topic as well as a step-by-step guide to appointing an authorised representative can be found in our knowledge base on the website of the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR) at www.verpackungsregister.org/en/authorising-a-representative.

9

What requirements are there for fulfilment services?

Fulfilment services play an important role in online retail. It involves a distributor/seller of goods tasking a service provider with different responsibilities such as warehousing, packaging, addressing and sending the goods. When that party assumes at least two of the activities listed and does not acquire ownership of the goods, then it is considered a fulfilment service provider.

A fulfilment service provider does not need to register in the LUCID Packaging Register or enter into a system participation agreement. Those requirements have to be met by the ordering party. In order for them to be able to fulfil their system participation requirements, the fulfilment service provider must inform them of the packaging volumes they are using for the various goods, categorised by material type (paper, paperboard, cardboard, light-weight packaging, glass, etc.). A new provision will enter into force for fulfilment service providers on 1 July. As from this date, they have to check and ensure that their ordering parties are fulfilling their packaging law obligations. Otherwise, they are no longer allowed to offer their services. There is a distribution ban on those goods.

What obligations apply for drop shipping?

Unlike fulfilment, there are no special provisions in place in the Verpackungsgesetz (Packaging Act). For drop shipping, a seller offers goods without warehousing the goods themselves. They buy them from a third party who packages the goods and sends them directly to customers. The seller never touches the goods themselves.

A **drop shipping seller** is not a producer within the meaning of the Verpackungsgesetz. That is because they are not placing packaging filled with goods on the German market for the first time themselves. That means they do not need to register in the LUCID Packaging Register or enter into a system participation agreement. These requirements definitely apply to the relevant shipper for the shipment packaging. They also need to check whether they have any obligations in respect of any other packaging, such as retail packaging. If, for example, they are also the manufacturer of the goods being shipped, then they need to ensure the retail packaging participates with a system.

The drop shipping seller is affected by the obligations imposed by the Verpackungsgesetz if they sell their goods via an electronic marketplace. The marketplace can only offer goods if it has ensured that the responsible producer has fulfilled their packaging law obligations. The marketplace usually has no contractual relationship with the drop shipping sender, but rather the seller (drop shipper). As such, the drop shipper has to demonstrate to the marketplace that the sender has complied with the law.

Another responsibility may arise in drop shipping when shipments originate from outside of Germany. In this case, the importer (that is the party who is responsible for the goods when they cross the border) has registration and system participation requirements.

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