



Information concerning imports: Who is the initial distributor under obligation?

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Information concerning imports under the Verpackungsgesetz

Throughout Europe, the producer of a product also bears producer responsibility for its packaging. This responsibility involves prevention, reusability and recovery. In Germany, this is given legal effect through the Verpackungsgesetz (Packaging Act). This is where the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR) has the responsibility of making public the parties who bear producer responsibility and are registered in the LUCID Packaging Register. It is also responsible for fostering transparency and legal certainty (e.g. receiving and reviewing data reports about the packaging volumes placed on the German market).

This informational booklet covers aspects that need to be considered when ensuring that the requirements set out in the Verpackungsgesetz are met when importing packaging subject to system participation that is filled with goods into Germany. It also provides information about authorising representatives – a new option for international producers that entered into force with the amended version of the Verpackungsgesetz on 3 July 2021, making it easier for them to comply with the law given certain import set-ups.



Checklist:

- ◆ Is packaging that was filled outside of Germany being imported into Germany?
- ◆ Is this being done commercially?
- ◆ Does the packaging distributed typically accumulate as waste with a private final consumer or a comparable source of waste generation?

'Import' in this case means the cross-border trading/purchase of goods from abroad (including other EU Member States) and their introduction to / sale in Germany. The special characteristics that arise in this context will be covered in this document. Registering with the LUCID Packaging Register and submitting data reports to the ZSVR is free of charge for importers.

What is a producer? Who is the party under obligation in the case of imports?

The Verpackungsgesetz uses the collective term 'producer(s)' to refer to parties under obligation: manufacturers, retailers, importers, online retailers and mail order companies, distributors, other initial distributors, etc. What it actually means, however, is any party that fills packaging for the first time with goods **or places filled packaging on the German market for the first time (importer)**. For producers of packaging subject to system participation, this involves packaging placed on the German market that accumulates as waste with a private final consumer or a comparable source of waste generation. For a complete [overview of comparable sources of waste generation](#), please see the FAQ 'Who is a private final consumer?' on the ZSVR's website. Importers commercially place retail, grouped and shipment packaging on the market for the first time within the jurisdiction of Germany. This makes them producers for the purposes of the Verpackungsgesetz. As such, they must fulfil the requirements involved (registration, system participation and data reporting).



Who is an importer?

The importer is the party who bears **legal responsibility** for the goods at the time they cross the border into Germany. In other words, the importer bears the transportation risk – which includes the risk of loss or damage to the goods – and is responsible for import operations (and, if applicable, customs clearance) of deliveries from non-EU countries. The question of who is the importer depends on the individual case and/or the **specific contractual provisions** agreed between seller and buyer.



Please note:

- ◆ The specific point in time that the transfer of ownership occurs is **not** a decisive factor.
- ◆ Even before the Verpackungsgesetz entered into force, the company placing the packaging on the German market for the first time was responsible for system participation.
- ◆ An appointed external freight forwarder / carrier is not deemed to be the company placing the packaging on the German market for the first time; it is instead the ordering party.

What packaging is subject to system participation, and who is a private final consumer?

In general, all retail, grouped and shipment packaging, including all the filler material, that typically accumulates as waste in private households is subject to system participation. Service packaging is subject to system participation without exception. A private final consumer is defined primarily as being a private household. But so-called comparable sources of waste generation also use the (dual) system to dispose of packaging waste.

Comparable sources of waste generation include restaurants, hotels, hospitals, educational institutions, leisure parks and freelancer offices. Furthermore, it includes craft enterprises and agricultural holdings, where their plastics, metal and composite packaging and/or paper/paperboard/cardboard can be collected at the rate that is normally associated with private households and in waste bins that do not exceed 1,100 litres per collection group.

It does not matter if the packaging filled with goods is first sent to a wholesaler, for example. The material consideration remains where the packaging typically accumulates as waste. As producers generally cannot assess whether or not the packaging filled by them typically accumulates as waste with private final consumers (including comparable sources of waste generation), the ZSVR has compiled a **system participation requirement catalogue**. Companies under obligation can use the catalogue to see the classification of many of the products distributed in Germany, i.e. whether they are subject to system participation or not.

The system participation requirement catalogue and the guideline for using the catalogue can be found on the ZSVR's website: <https://www.verpackungsregister.org/en/foundation-authority/system-participation-requirement-catalogue/general-information/>

The catalogue is intended to provide producers / initial distributors with a generalised assessment and objective guideline for classifying packaging in cases of doubt. Given the generalised nature of the assessment, it is irrelevant where the packaging of your products accumulates as waste in each individual case – what matters is where it typically accumulates.



Each market is looked at as a whole in this context: if packaging in a market typically accumulates as waste with private final consumers or comparable sources of waste generation, the system participation requirement applies.

If you cannot find your products in the catalogue, you can assess them analogously, i.e. you look for products that are similar to yours in the catalogue – similar in kind, but especially similar in how they are distributed and whether they typically accumulate as waste with final consumers. As a general rule, packaging that typically accumulates as waste with private final consumers / comparable sources of waste generation are subject to system participation.

If you are not able to determine your packaging's classification, you can apply to the ZSVR for a system participation requirement determination. More information and the necessary application forms can be found here: <https://www.verpackungsregister.org/en/foundation-authority/administrative-procedures/application-procedures>.

What are the general requirements? (Registration, system participation and volume reporting)

The basic requirement for producers/importers is to have packaging subject to system participation participate in one or more system(s) which will then collect the packaging from private final consumers nationwide and organise sorting as well as recovery/recycling. This means that systems are also responsible for ensuring that the recycling targets defined by law (and any increases in these targets) are being met. **System participation** is a requirement that has been around since 1993.

System participation must be undertaken with one or more of the (dual) system(s) approved for operation throughout Germany. These systems compete with each other. Prices are market prices and need to be queried with the systems.



Obligations under the Verpackungsgesetz:

- (1) Registration, i.e. registering in the ZSVR's LUCID Packaging Register, with master data and brand names. Please note that the ZSVR is legally required to publish a portion of this master data (including the VAT number or taxpayer reference number as of 3 July 2021).
- (2) Volume reporting: exact duplicates of all reports concerning packaging volumes placed on the German market that are provided to the (dual) systems also have to be provided to the ZSVR. The reports are duplicate both in terms of content and reporting schedule.

The ZSVR has published a list of all the approved systems in Germany, including contacts, on its website:

→ <https://www.verpackungsregister.org/en/information-orientation/instructions-further-information/systems-overview>

Details on how to register and report data can be found at the end of this informational booklet.



How to appoint an authorised representative

Since 3 July 2021, companies/importers who

- 1) are under obligation pursuant to the Verpackungsgesetz, but
- 2) have no branch in Germany

can appoint an authorised representative to fulfil their obligations under the Verpackungsgesetz for them. This applies to all obligations with the exception of the registration requirement in the LUCID Packaging Register. For the authorisation to be effective, the international party under obligation must first enter into an agreement with the authorised representative. This agreement governs the transfer of obligations. The ZSVR's public register shows the authorised representative the international producer has appointed.

Please note: International parties under obligation who do not appoint an authorised representative have to fulfil all of the duties under the Verpackungsgesetz themselves. After being appointed, the authorised representative is effectively considered to be the producer for the purposes of the Verpackungsgesetz, and acts in their own name when fulfilling the obligations. These obligations include in particular:

- participating in one or more system(s);
- submitting data reports on packaging volumes;
- filing audited declarations of completeness where thresholds have been exceeded;
- fulfilling return obligations for transport packaging and large commercial or industrial retail and grouped packaging;
- and participating in a nationwide deposit system for single-use beverage packaging subject to deposit.



What you need to know about working with an authorised representative

- ◆ Every service provider located in Germany, or operating a branch in Germany, can be an authorised representative. This service provider already needs to have a login with an authorised representative ID for the LUCID Packaging Register for international producers to be able to choose and appoint them as an authorised representative in LUCID.
- ◆ International parties under obligation must conclude a written agreement with their authorised representative – in German. If there are versions of the agreement in other languages, the German version will be binding. The agreement must bear the handwritten signature or qualified electronic signature of both parties.
- ◆ For more information about appointing and working with an authorised representative, please visit our [website](#).



Public register

The LUCID Packaging Register is public. It shows the companies under obligation that have registered, as well as the brand names of the packaging that they place on the German market. By registering, the companies show that they are taking financial producer responsibility for the collection and recycling of their packaging, creating transparency in producer responsibility.

What does that mean for importers?

Many different contractual arrangements are possible when importing goods. There are several different set-ups concerning who bears legal responsibility – and when – for goods crossing the border and therefore becomes the party under obligation for the purposes of the Verpackungsgesetz (i.e. the party having to fulfil all requirements) and able to appoint an authorised representative. Incoterms, international commercial terms that are frequently used to determine the contractual rights and obligations of each contracting party, can serve as a point of reference. In the following, various set-ups and their implications will be discussed.

1

Basic set-up 1:

A mail order company or online retailer located outside of Germany sends goods directly to private final consumers or comparable sources of waste generation in Germany

- **System participation requirement:** The mail order company or online retailer introduces both the filled shipment packaging and the product packaging (retail packaging) into the jurisdiction of the Verpackungsgesetz, for the first time and on a commercial basis. In this case, the mail order company or online retailer is considered to be the importer. They are therefore under obligation to undertake system participation with one or more systems for the shipment packaging (including filler material and labels) and the retail packaging of the product. They are the producer of this shipment and retail packaging under the Verpackungsgesetz.
- **Registration requirement:** The mail order company or online retailer is required to register in the LUCID Packaging Register, as they are subject to system participation for both packaging types (shipment and retail packaging). They are also required to submit data reports about the volume of this packaging that they place on the German market annually (volume reporting).
- **Specifying brand names:** In this case, the mail order company or online retailer is required to register the brand names specified on the retail and grouped packaging. For shipment packaging, it is the brand name specified on the shipment packaging that needs to be registered. If no name is specified on it, then the company name of the mail order company or online retailer, or the personal name of the mail order or online retailer is to be provided.
- **Appointing an authorised representative:** If they do not have a branch within Germany, mail order companies and online retailers have been able to appoint an authorised representative under the Verpackungsgesetz since 3 July 2021. For further details, please refer to page 4.



2

Basic set-up 2: Distributor (e.g. online retailer or mail order company, trading company, etc.) located in Germany buys goods directly from a distributor located abroad

In this case, the **specific contractual provisions** agreed upon between the contracting parties are decisive. It must be determined who bears legal responsibility for the goods at the time they cross the border (and who, therefore, is considered to be the importer within the meaning of the Verpackungsgesetz). Where they have been agreed on, Incoterms can serve as a **point of reference**. In the following, two set-ups will be discussed as examples.

'Ex works' (EXW)

If the production plant is abroad, legal responsibility for the goods at the time they cross the border rests with the buyer. In this case, the buyer is the distributor in Germany. This has the following consequences:

- **System participation requirement:** The buyer is the importer and also the producer within the meaning of the Verpackungsgesetz. The seller must undertake system participation for the retail and grouped packaging filled with goods if this packaging typically accumulates as waste with private final consumers or comparable sources of waste generation.

Excursus: The packaging that is used to deliver the goods to the downstream seller in Germany is transport packaging, and as such not subject to system participation. It will become subject to system participation where it is re-used to ship the goods to a private final consumer or comparable source of waste generation.

- **Registration requirement:** The buyer (importer) is required to register with the LUCID Packaging Register. They are also required to submit data reports about the volume of this packaging that they place on the German market annually (volume reporting).
- **Specifying brand names:** In this case, the importer is required to register the brand names specified on the retail and grouped packaging. If the imported products do not have or bear brand names, it is the name of the producer within the meaning of the Verpackungsgesetz that must be specified.
- **Appointing an authorised representative:** Because the buyer located in Germany is deemed to be the importer, they are not able to appoint an authorised representative under the Verpackungsgesetz.

'Delivered at place' (DAP)

If the agreed place of delivery is in Germany and the seller (distributor abroad) is responsible for the delivery, the seller usually also bears legal responsibility for the packaged goods crossing the border.

- **System participation:** The seller is the importer and also the producer within the meaning of the Verpackungsgesetz. The seller must undertake system participation for the retail and grouped packaging filled with goods (including shipment packaging) if this packaging typically accumulates as waste with private final consumers or comparable sources of waste generation.



- **Registration requirement:** The seller (importer) is required to register with the LUCID Packaging Register. They are also required to submit data reports about the volume of the packaging that they place on the German market annually (volume reporting).
- **Specifying brand names:** In this case, the importer is required to register the brand names specified on the grouped and retail packaging. If the imported products do not have or bear brand names, it is the name of the producer within the meaning of the Verpackungsgesetz that must be specified.
- **Appointing an authorised representative:** If they do not have a branch within Germany, importers have been able to appoint an authorised representative under the Verpackungsgesetz since 3 July 2021. For further details, please refer to page 4.

3

Basic set-up 3: Using fulfilment service providers for imports

Where imports are concerned, a differentiation must be made between the product packaging of the goods (retail and/or grouped packaging) and the shipment packaging:

- The importer is the one who must ensure system participation of retail and/or grouped packaging of an article. The importer is also required to register with the LUCID Packaging Register and submit reports on annual packaging volumes. As described in the basic set-ups, the importer may be the distributor (mail order company or online retailer) or manufacturer/wholesaler abroad; this generally depends on which party bears legal responsibility for the goods at the time they cross the border.
- The amended version of the Verpackungsgesetz, large parts of which entered into force on 3 July 2021, contains specific provisions concerning shipment packaging. These provisions can be found in section 7 (7) and section 3 (14c) VerpackG (Packaging Act): In accordance with these provisions, fulfilment service providers who fill shipment packaging subject to system participation with goods are not considered producers within the meaning of the Verpackungsgesetz. Instead, the producer of the shipment packaging is the distributor of the goods who has commissioned the fulfilment service provider. As such, it is the distributor who must register the shipment packaging and ensure its system participation.

The distributor under obligation pursuant to the Verpackungsgesetz will then have to request the information required for system participation – such as the shipment packaging volumes and material types – from their fulfilment service provider. Under section 3 (14c) VerpackG, a fulfilment service provider is anyone offering at least two of the following services for distributors in the course of their business activities: warehousing, packing, addressing and dispatching goods over which they have no ownership.

Post, parcel delivery or other forwarding agents are not classified as fulfilment service providers.

- Starting 1 July 2022, fulfilment service providers will only be able to provide their fulfilment services if the commissioning distributor has registered in the Packaging Register and the packaging (shipment and product packaging, as applicable) has participated with a system.



4 Basic set-up: Exports

The Verpackungsgesetz only applies within Germany. Where it can be proven that packaging filled with goods is sent abroad, the relevant packaging law requirements of the destination country must be observed. System participation in Germany is not necessary for this sort of packaging because it will not accumulate as waste with private final consumers in Germany. This also applies in the case of goods that are merely in transit through Germany.



Please note: Compliance requirements

- ◆ The important thing is that a decision on this issue that is **legally binding** for both contracting parties is agreed upon **before any packaging is placed on the German market** and has participated in a system (system participation requirement).

The party under obligation must also have registered with the ZSVR (registration requirement). They must also specify the brand names of their products (specifying brand names) and report the packaging volumes they placed on the German market on an annual basis (data reporting).

The final distributor in Germany must ensure that the obligations in the Verpackungsgesetz are complied with. If this is not the case, the goods are automatically subject to a **distribution ban** in Germany.

Using used packaging

Packaging in which goods are delivered to a mail order company or other retailer is transport packaging, if – typically – it is not intended to be passed on to the final consumer. Transport packaging serves the purpose of handling and transporting goods between the individual distributors. It typically remains at commercial premises and (initially) accumulates there as waste. Unlike retail packaging and grouped packaging, transport packaging has not participated in a system up to that point.

By reusing this or other used packaging, a mail order companies are acting economically because they are saving the cost of procuring new cardboard boxes; doing so helps to prevent waste and saves money.

At the same time, this packaging becomes retail packaging when it is refilled at the mail order company's premises since filling it clearly means that it will now accumulate as waste with private final consumers. It therefore has to participate in a system. There is also no duplicate payment. All the packaging components (including filler material, labels, tape, etc.) are only subject to the requirements set forth in the Verpackungsgesetz once.

There is only one case in which the system participation requirement does not apply: if a mail order company has definite evidence that the packaging it is using has already participated in a system.



Using compostable packaging, packaging with recycling material, etc.

The system participation requirement is triggered only when retail or grouped packaging typically accumulates as waste with private final consumers – regardless of material type or properties. As such, there are no special rules or exceptions that apply where something is potentially biodegradable. The packaging is subject to system participation as long as the criteria of the Verpackungsgesetz are met.

System participation based on a registration number, buying 'licensed' packaging

Entering into a system participation agreement is only possible when the exact registration number of the producer under obligation is provided. By the same token, a system operator must also provide confirmation to that party under obligation about the volumes, per material type, that underwent system participation. The registration requirement under section 9 VerpackG and the other obligations contained in the Verpackungsgesetz must therefore be discharged by the importer for the grouped, shipment and retail packaging they distribute.

That means that purchasing 'licensed' packaging is not sufficient. It is possible to use a broker or upstream distributor to carry out system participation; they may do things like bundling volumes. But it can only take place in concrete terms, i.e. it cannot be done in advance in relation to abstract volumes; it must be linked to the **specific registration number** of a producer. It must also be ensured that the producer receives confirmation from the relevant system operator. Registration and volume reporting (see below) cannot be undertaken by a third party. Importers must do this themselves; this is intended to prevent a third party from carelessly providing incorrect information on behalf of the mail order company, something that could result in a distribution ban or an administrative fine.



Registration process and preparation

To ensure that you register successfully with the LUCID Packaging Register, please prepare for the registration process using our 'Checklist – The obligations apply to me: What do I have to know before registering?'

(<https://www.verpackungsregister.org/en/information-orientation/instructions-further-information/checklists>)

To get you started, here are a few tips on how to register with the LUCID Packaging Register:

1. When registering, please make sure that every field marked with an asterisk is filled out.
2. The Packaging Register will not accept passwords that contain underscores, umlauts, accents, etc.



→ a) VAT number / taxpayer reference number

A VAT number or taxpayer reference number is required for registration. Please enter your taxpayer reference number without any special characters, digits only. That is all that is needed. Please note: Since 3 July 2021, the VAT number or taxpayer reference number will be published in the LUCID Packaging Register.

→ b) National identification number

A national identification number is requested so that the registered producer can be definitively identified for the purposes of the Verpackungsgesetz.

If your type of identification number is not listed, please select 'Other'. You can then enter a description of your identification number. Other possible company-related identification numbers include: Membership numbers for professional associations, EORI numbers, agricultural company numbers or even an EU-eco control number.

Where your commercial activities truly do not have any of the identification numbers listed – or any similar number that makes it possible to definitively identify your business or your activity and that was assigned by an official authority –, please select 'Other' from the 'Type of national identification number' drop-down menu. In the mandatory 'Description' and 'Issuing authority' fields, enter 'None'. You can then continue with your registration, or go back to edit the entries you made in the 'Master data' section.

→ c) Specifying brand information

When importing packaging subject to system participation, the importer must personally specify the brand names of the products.



Volume reporting

Before providing volume reports, the following figures need to be determined:

1. Categorising material types

In a first step, packaging needs to be categorised according to material type. For glass, paper, plastic, etc. the following generally applies: where a component makes up less than 5 % of the mass (e.g., tape on shipment packaging, <5 % = paper/paperboard) it is classed as being part and parcel of the main material. Only when a packaging component accounts for more than 5 % of the total weight, and cannot be separated by hand, is it classed as a composite. Although they are composites, beverage cartons, i.e. packaging containing beverages pursuant to the Verpackungsgesetz, form a separate category. All other composites, that do not contain beverages, are 'Other composite packaging'.

2. Determining the weight of a piece of packaging

The second step concerns the packaging mass: The packaging volumes / packaging mass can be determined by



- ◆ **weighing packaging, or**
- ◆ there is a **specification indicating the weight of the individual pieces of packaging;**
- ◆ the weight can also be calculated using the **total weight information listed on the delivery note**, where available. This could be, for example, a **delivery note or an invoice** issued by the company delivering the packaging, or a **specification** provided by the producer of the packaging for their **packaging including weight**.

It is important that the way the figures have been calculated is verifiable and makes sense.

3. Determining the total weight

In the third step, the number of packaging items is multiplied by the calculated weight for each type of material. For simplicity, the number of items in the previous business year is often used. If it becomes clear that it is no longer accurate because business is growing or a product is being pulled, then the total weight will need to be corrected.

By following these steps, the planned volumes for the year ahead can be calculated. These planned volumes can be used when entering into a contract with a system, and when providing the first volume report to the LUCID Packaging Register. If the actual values need to be calculated at the end of the year, the number of items used for the forecast is simply replaced by the actual number. The rest of the process remains the same.



Service for IT-related questions, legal questions and consulting services

The ZSVR is happy to answer specific legal questions about the interpretation of the Verpackungsgesetz. We thank you for your understanding that it is beyond our remit to provide (legal) consulting services on an individual basis.

We ask that you consult with an appropriately qualified expert or consultant and/or system instead.

Contact list:

<https://www.verpackungsregister.org/en/information-orientation/instructions-further-information/systems-overview>

You can also find the experts and other auditors in the register who may be able to provide advice.

List of registered experts and other auditors:

→ <https://oeffentlicheregister.verpackungsregister.org>



If you are based in Germany, you can enter your postcode to find experts and other auditors in your area. Alternatively, you can select 'Germany' to find all the registered experts and other auditors across country. Companies from outside Germany can find registered auditors by clicking on the applicable country in the search form. If auditors have registered for the applicable country in the ZSVR's register of auditors, their details will be displayed.

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