



## Information about the Verpackungsgesetz for mail order companies and online retailers

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 mail order companies and online retailers need to consider when fulfilling the obligations set out in the Verpackungsgesetz relating to packaging that is subject to system participation. 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.



### Checklist:

- ◆ Is packaging being filled with goods (e.g., shipment packaging)? and/or
- ◆ Is packaging that was filled outside of Germany being imported into Germany?
- ◆ Is this being done commercially? and
- ◆ Does the packaging distributed typically accumulate as waste with a private final consumer or a comparable source of waste generation?

The special characteristics of this sector, which spans very small and very large mail order companies, is set out below. Registering with the LUCID Packaging Register and submitting data reports to the ZSVR is free of charge.

### Who is under obligation? Who is a producer?

The Verpackungsgesetz uses the umbrella term 'producer'. What it means, however, is actually any party who is the first to fill packaging with goods – or the first to place filled packaging

on the German market (importer) – where that packaging typically accumulates as waste with private final consumers. A mail order company is the first to fill shipment packaging with goods, it is therefore considered a producer for the purposes of the Verpackungsgesetz. It must fulfil the obligations under the Act if it is acting commercially (registration, system participation and volume reporting).

### 'Commercial activity' – no de minimis threshold

The Verpackungsgesetz **does not provide for a de minimis** threshold for the registration, system participation and data reporting requirements. As soon as an activity is considered to be undertaken commercially, the obligations under the Verpackungsgesetz must be complied with. This means:



- ◆ **Any party who has declared or is required to declare sole trader status through a trade registration,**
- or
- ◆ **any party who generates income from a commercial enterprise, freelance work or agricultural or forestry works for the purposes of income tax law,**

is operating commercially without exception for the purposes of the Verpackungsgesetz. Even individuals who claim losses against taxes owing to their activity or compute profit from agriculture and forestry on the basis of average rates (section 13 a (6) EStG (Income Tax Act)) are operating commercially.

### Private final consumer

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 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.

The **critical factor** is where the packaging accumulates as waste, and not who the next step is in the supply chain. It does not matter if the packaging is first sent to a wholesaler, for example. The decisive factor is where the packaging is typically disposed of.

### What obligations does the Verpackungsgesetz impose generally (registration, system participation and volume reporting)?

The fundamental obligation is to have packaging participate in one or more system(s), which will then collect the packaging from private final consumers nationwide. Systems are responsible for ensuring that the recycling quotas defined by law (and increases in these quotas) 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 systems approved for operation throughout Germany. These systems compete with each other. Prices are market prices and need to be queried with the systems. 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 requirement to register 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](#).



### 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 (Since 3 July 2021, the master data to be published includes the VAT number or taxpayer reference number among others).
- (2) Volume reporting: Duplicates of all reports concerning packaging volumes placed on the market that are provided to the systems also have to be provided to the ZSVR. These are duplicate reports in the purest sense, i.e. they must be identical both in terms of content and reporting schedule.

### Public register

The LUCID Packaging Register is public. It shows the companies under obligation together with the brand names that they have registered. With their registration, companies make it clear to the public that they are taking financial producer responsibility for collecting and recycling their packaging, creating transparency in producer responsibility.

### What does that mean for mail order companies?

Not all mail order companies are the same, there are many different set-ups: from drop shipping to fulfilment to a combination with imports. The different set-ups and resulting implications are set out below.

## Typical situations for delivering/selling packaged goods in online retail:

1

### Basic set-up 1:

#### A mail order company ships a producer's goods from within Germany

- **System participation requirement:** The mail order company is the first to hand over the filled shipment packaging to a third party. The shipment packaging accumulates as waste with private final consumers. The mail order company (a producer in relation to the shipment packaging) is therefore required to undertake system participation for the **shipment packaging** (including filler material and labels).
- In the case of direct product packaging, however, the mail order company is simply the retailer (distributor) and bears no obligation in that regard. The producer of this product is the first to hand over the filled retail packaging to a third party. Therefore the manufacturer is responsible for the product packaging and must ensure that the packaging participates in a system and that all the other obligations for product packaging under the Verpackungsgesetz are met, such as registration and data reporting.
- **Registration requirement:** The mail order company is required to register because it is subject to system participation for the shipment packaging. The mail order company is also required to report information about the volume of the packaging that it places on the German market every year (volume reporting).
- **Specifying brand names:** The mail order company only needs to specify the brand names of its shipment packaging. This is the brand name specified on the shipment packaging. If no name is specified on it, then the personal name of the mail order retailer or the company name of the mail order company is to be provided.



- **Do not specify:** the brand names of the products, the name of the system or the packaging manufacturer.

## 2

### **Basic set-up 2: A mail order company ships the goods of a producer from outside of Germany**

- **System participation requirement:** If the mail order company is the importer of the product, it is the first to hand over the packaged goods to a third party within the jurisdiction of the Verpackungsgesetz (in other words: Germany). The importer is therefore deemed to have the same producer responsibility as a producer, and is also required to undertake system participation for the product packaging and all of its components.
- The **importer** is the party who bears legal responsibility for the goods at the time they cross the border. This should be clarified between the contracting parties on a case-by-case basis. It is important that the contracting parties reach a legally binding decision on this issue before any packaging is placed on the German market, and that the importer takes care of system participation, registration and volume reporting.

An importer may also be an online shop located outside of Germany if the goods are delivered directly to private final consumers in Germany. This applies to both the shipment packaging, including the filler material, and the product packaging itself if it would typically accumulate as waste with private final consumers.

The mail order company is the first to hand over the filled shipment packaging to a third party. The shipment packaging accumulates as waste with private final consumers. The mail order company is therefore required to undertake system participation and to report volumes in the LUCID Packaging Register for the shipment packaging (including filler material and labels). Goods sent from an EU Member State are also treated as imports.

- **Registration requirement:** The mail order company is required to register because it is subject to system participation for the product packaging and the shipment packaging. The mail order company is also required to report the volume of the packaging that it places on the German market every year (volume reporting).
- **Specifying brand names:** The mail order company must specify both the brand names of the products and the brand name of its shipment packaging.

## 3

### **Basic set-up 3: Commissioning fulfilment service providers**

- The amended version of the Verpackungsgesetz, parts of which entered into force on 3 July 2021, contains specific provisions concerning the responsibility of distributors – including mail order companies and online retailers – regarding shipment packaging where fulfilment service providers are used. 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.
- Where imports are concerned, special provisions may apply. Please see our subject-specific paper on [imports](#) for more information.

## 4

### Basic set-up 4: Exports

The Verpackungsgesetz only applies within Germany. Where a mail order company ships goods abroad, the relevant packaging law requirements of the destination country must be observed. System participation is not necessary for this sort of packaging in Germany because it will not accumulate as waste with private final consumers in Germany.

### Using used packaging

Packaging in which goods are delivered to a mail order company or other retailer is considered transportation 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, 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/shipment 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 conclusive 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. It should also be noted that for this type of packaging (unlike service packaging) it is not possible to shift system participation upstream. The registration requirement under section 9 VerpackG and the other obligations contained in the Verpackungsgesetz must therefore be met by the mail order company for the shipment packaging it distributes where the mail order company is the importer or producer of the goods.

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. A mail order company must do this itself; 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 a 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 LUCID 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 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

If you are a traditional mail order company and are only responsible for shipment packaging under the Verpackungsgesetz, enter the name of your business or company. Only if you import goods yourself as a traditional retailer/distributor do you need to specify product brand names.



## 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 volume/mass has been calculated in such a way that it can be followed.**

### 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 contractual agreement with a system, and when submitting 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 registered experts and other auditors across the country.

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