



Due to the amendments to the Verpackungsgesetz (Packaging Act) since 1 July 2022, this subject-specific paper is currently being updated.

Information about the German Verpackungsgesetz (Packaging Act) on the obligations for packaging subject to system participation for mail order companies and online retailers

Throughout Europe, the producer of a product also takes producer responsibility for the packaging – in terms of preventing packaging waste in the first place, but also in terms of optimising reuse and recovery of what cannot be prevented. For Germany, implementation of this responsibility is assured by the Verpackungsgesetz (Packaging Act). This is where the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR) assumes the task of making public the parties responsible for products through the LUCID Packaging Register, as well as other tasks that foster transparency and legal certainty (e.g. data reports of packaging volumes placed on the German market).

This informational booklet covers aspects that need to be considered when ensuring that the requirements set forth in the Verpackungsgesetz are complied with in the case of mail order companies and online retailers. The particular features of this sector, from the smallest to very large mail order companies, will be set out below. Registering with the LUCID Packaging Register and submitting data reports with the ZSVR is free of charge.



Checklist:

- ◆ Is packaging being filled with goods (e.g., shipment packaging)?
- ◆ 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?

To whom does the Verpackungsgesetz apply? What is a producer?

The Verpackungsgesetz uses the umbrella term 'producer'. What it means, however, is actually any party that fills packaging for the first time with goods – or places filled packaging on the German market for the first time (import) – where that packaging generally accumulates as waste with private final consumers. A mail order company fills shipment packaging with goods for the first time, so is therefore considered a producer for the purposes of the Verpackungsgesetz. It must discharge the duties 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 system participation / registration and data reporting duties. As soon as an activity is considered to be undertaken commercially, the requirements of 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 in all cases within the meaning of the Verpackungsgesetz. Even an individual who claims losses against taxes owing to their activity or computes profit from agriculture and forestry on the basis of average rates (section 13a (6) EStG (German Income Tax Act)) is operating commercially.

Private final consumer

A private final consumer is primarily 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 are collected at the rate that is normally associated with private households and in a container that does not exceed 1.1 cubic metres.

Important note:

The critical factor is where the packaging accumulates waste, and not who the next step is in the supply chain. Even if packaging is immediately being sent to a wholesaler, etc., that is immaterial. The decisive factor is where the packaging is usually disposed of.

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

The fundamental duty is to have packaging participate in one or more system(s), which will then collect the packaging from private final consumers nationwide and maintain recycling targets. **System participation** is a duty that has been around since 1993.

System participation must be undertaken with one or more of the officially approved (dual) system(s). They compete with one another; the prices are market prices, and information on prices can only be obtained from the systems themselves. The ZSVR has published a list of all the officially approved dual systems in Germany, including contacts, on its website.

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

Details on registration and volume reporting can be found at the end of this information sheet.



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 required to publish a portion of master data (including e-mail address).
- (2) Volume reporting, i.e. 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. The reports are duplicated both in terms of content and reporting schedule.

Public register

The LUCID Packaging Register is public. It shows companies under obligation that have registered their brand names. By doing so, these companies are demonstrating that they have assumed financial producer responsibility for the collection and recycling of their packaging. This facilitates producer responsibility transparency.

What does that mean for mail order companies?

Not all mail order companies are the same, some have very different set-ups: drop shipping, the use of fulfilment, combination with

imports, etc. The different set-ups and the resulting implications are set out below:

Typical situations of delivering/selling packaged goods in online retailers:

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Basic set-up 1:

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

- **System participation requirement:** The mail order company hands the filled shipment packaging over to a third party for the first time. 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 duty in that regard. The manufacturer is responsible for the product packaging (they hand over the filled sales packaging to a third party for the first time) and must ensure that the packaging participates in a system and that all the other requirements for product packaging under the Verpackungsgesetz are met, such as registration and data reporting.
- **Registration requirement:** The mail order company is required to register since it is subject to system participation for the shipment packaging. It is also required to report information about the volume of the packaging that it places on the German market annually (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 system or the packaging producer.

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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 (that is to say, in 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 onto the German market, and that the importer takes care of system participation, registration as well as volume reporting.

An online retailer located outside of Germany will also be classified as an importer if its 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 this would generally accumulate as waste with private final consumers.

The mail order company hands over the filled shipment packaging to a third party for the first time. 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 to 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:** A mail order company has a duty to register because it is subject to system participation for the product packaging and the shipment packaging. It is also required to report information about the volume of this packaging that it brings into circulation annually (volume reporting).
- **Specifying brand names:** It must specify both the brand names of the products and the brand name for its shipment packaging.

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Basic set-up 3: Commissioning fulfilment service providers

- The amended version of the Verpackungsgesetz (Packaging Act – VerpackG), 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:



- In accordance with these provisions, fulfilment service providers who fill shipment packaging subject to system participation packaging 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 / mail order company / online retailer 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.

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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 boxes; doing so helps to prevent waste and saves money.

At the same time, this packaging becomes sales packaging when it is refilled at the mail order company: when it is filled, it is clear that it will now accumulate as waste with a private final consumer. It therefore has to participate in a system. There is also no duplicate payment. All the packaging components are only subject to the requirements set forth in the Verpackungsgesetz once, including any filler material used.



Only where a mail order company has definite evidence that the packaging it is using has already undergone system participation does the obligation to fulfil the system participation requirement for the shipment packaging it is using cease to apply.

Using compostable packaging, packaging with recycling material, etc.

The system participation requirement is triggered only when sales 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 registration number, buying 'licensed' packaging

Entering into a contract on system participation 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 (Packaging Act) and the other obligations contained in the Verpackungsgesetz must therefore be discharged 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 an administrative fine.



Registration process and preparation

To prepare for the registration process, please refer to the checklist (<https://www.verpackungsregister.org/en/information-orientation/instructions-further-information/checklists>)

To get you started, here are a few tips on registration:

1. When registering, please make sure that every field marked with an asterisk is filled out.
2. Please be sure that you confirm the Terms of Use in step 3.



3. The LUCID Packaging Register will not accept passwords that contain underscores, umlauts, accents, etc.

→ **a. VAT number / taxpayer reference number**

It is possible to register using a taxpayer reference number. Click on the text 'I do not have a VAT ID', and a field will appear to enter a taxpayer reference number. Please enter your taxpayer reference number without any special characters, digits only. That is all that is needed.

→ **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 company 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 you can 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 mail order company or company name. 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, does it constitute a composite. Composites are divided between beverage cartons (this sort of packaging contains beverages for the purposes of the Verpackungsgesetz) and all other composites that do not contain beverages, which are 'other composite packaging'.



2. Determining the weight of a piece of packaging

The second step concerns the packaging mass. The packaging volumes of the 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 by the producer of the packaging, providing a **specification for its packaging including weight**.

It is important that the way the figures have been calculated is transparent 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 company year is often used. If it becomes clear that it is no longer accurate because company 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 technical questions, legal questions and advice

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 advice on an individual basis. We ask that you consult with an appropriately qualified expert or consultant and/or system operator instead.

Contact list:

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

You can also find 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 postal code to find experts in your area. [Alternatively, you can select a country to find registered experts pursuant to sections 3 (15), 27 (1) VerpackG there. / Alternatively, you can select 'Germany' to find registered experts pursuant to sections 3 (15), 27 (1) VerpackG across the country.

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