

The New German Packaging Law:

What's Changed for
Online Retailers?



The new German Packaging Law (Verpackungsgesetz [VerpackG]) came into force on 1 January 2019, simultaneously replacing the Packaging Regulation (Verpackungsverordnung [VerpackV]) as the applicable law. Retailers are required to register and make the necessary preparations in good time. The following contains important information about the most significant changes.

The draft bill on new packaging legislation was passed by the Federal Council on 12 May 2017, thereby removing the final hurdle and paving its way to legal validity. The aim being pursued by this law is to increase recycling quotas for

different types of packaging material, whilst reducing the total amount of waste generated.

Unlike in the the Packaging Regulation, mail-order companies are now obligated to register with the “Stiftung Zentrale Stelle Verpackungsregister” - a foundation governed under private law - in accordance with the new Packaging Law. Failure to register will mean that participating in a dual system is no longer possible.



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What constitutes packaging

Section 2 (1) of the Packaging Law stipulates that “this law shall apply to all packaging”. Section 3 contains a more specific definition of “packaging”. The term packaging, as per its legal definition, denotes:

“...products derived from any type of material used for the purpose of containing, protecting, handling, supplying or presenting goods, which may cover anything from raw material through to processed products, and which are to be transferred from the manufacturer to the

distributor or the end consumer.”

Shipping material such as, air pockets, filler material etc. shall be subject to a licensing obligation. Furthermore, exterior packaging that enables a product to be held on a sales shelf shall also fall under the term “packaging” in future. This had not been the case under the Packaging Regulation.

Annex 1 to the Packaging Law contains a list of additional criteria aimed at facilitating such a determination.



Throughout this process, attention should always be paid to the specific circumstances of use concerning the object. For example, while a hangar sold along with a garment is considered packaging, this does not apply if the hangers are sold separately.

Important: Both product and shipping packaging fall within the scope of this law. If the product manufacturer has licensed the product packaging, the retailer is only required to license the shipping packaging. Careful checks should be made in the event of any doubt, especially when importing goods from third countries.

Who is affected by the new law?

The primary significance of the Packaging Law affects the so-called “manufacturers”.

Pursuant to Section 3 (14) this term refers to those distributors who introduce the packaging for the first time into commercial circulation, or who introduce packaging as part of commercial operations that fall within the scope of the law.

A manufacturer may therefore also be a retailer who packages the merchandise ready for shipment, who then subsequently introduces the shipping packaging into commercial circulation for the first time

Mandatory registration

Every retailer who introduces sales or protective packaging containing merchandise intended for the end consumer into commercial circulation shall be required pursuant to Section 9 of the Packaging Law to register before circulation with the newly established foundation governed under private law ["Stiftung Zentrale Stelle Verpackungs-register"](#).

Failure to register shall prohibit the introduction of any packaging into circulation that is subject to mandatory system integration. If a distributor has not yet registered with the foundation "Stiftung Zentrale Stelle Verpackungs-register" prior to the new law coming into force, he or she may face a fine of up to EUR 200,000.



Mandatory system integration

Section 7 (1) of the new law stipulates mandatory system integration for mail-order companies. This means that these companies are obligated to participate in a nationwide packaging return programme, or one or more dual systems.

Should a manufacturer fail to participate in such a system, the introduction of packaging into commercial circulation in accordance with Section 2 (8) of the Packaging Law - sales or protective packaging containing merchandise - shall be prohibited.



Declaration of integrity

Certain manufacturers are required to submit a so-called “Declaration of integrity” (“Vollständigkeitserklärung”) to the foundation “Zentrale Stelle Verpackungsregister” annually, by 15 May, which will then be reviewed by a designated specialist. This declaration must list all sales and exterior packaging introduced into commercial circulation for the first time during the year.

However, this obligation shall, pursuant to Section 11 (4) only apply to those manufacturers, who have introduced a certain quantity of packaging materials subject to mandatory system integration for the first time. The threshold value for paper, board and cardboard is at least 50,000 kg per calendar year.



Collection, return and recovery

These systems are obligated to ensure the comprehensive collection of all empty packaging from private end consumers (collection system) or in their vicinity (drop-off system), or through a combination of both variations, in a sufficient manner and free of charge for the private end consumer, and within the catchment area operated in by those participating manufacturers - pursuant to Section 14 (1).

However, in accordance with Section 15 (1) Sentence 1, manufacturers and the subsequent distributors of transport packaging are also required to take back any packaging they have brought into commercial circulation, either at the place of actual delivery or in the immediate vicinity, free of charge.

However, those deemed to be “final distributors” shall only be required to take back the packaging stemming from the merchandise actually provided by them.

Both the systems and the manufacturers who have taken back packaging must, give priority to the preparation of said packaging for reuse or recycling.

New deposit system and notification requirements

Pursuant to Section 31 (1) the manufacturers of disposable packaging filled with beverages are obligated to demand the payment of a deposit by the customer of at least EUR 0.25 per packaging. This deposit stipulated under Section 31 (4) No. 7 lit. f of the Packaging Law shall not apply to “milk and mixed milk beverages with a milk content of at least 50%”, and shall therefore only apply to milk and milk beverages with a content of up to 49.99%.

Furthermore, the final distributors of beverage packaging shall, in future, also be subject to the obligation to notify consumers about its use after being returned. Distributors of disposable packaging shall be required to inform consumers that the packaging will not be reused after its return. Conversely, consumers should be notified of a packaging’s reusability, if it is designed for reuse.

Mail-order companies shall be required to publish these instructions in their respective presentation media. Accordingly, these new notifications (“single use” or “multi-use”) must be listed on the respective product page of online shops.

Conclusion

The Packaging Regulation had been in place for some time, meaning that a dual system for online retailers is nothing new. The Packaging Law details key changes that must be observed.

In particular, early registration with the newly created administrative authority (Zentrale Stelle) is highly recommended in view of the fact that, from 2019 onwards, market participants will be able to check whether a registration has already been submitted, and whether system participation is also no longer possible. Consequently, now is the right time.

Any breach of statutory obligations can lead to fines of up to EUR 200,000 - Section 34 (1) and (2) of the Packaging Law. On that note, it should be mentioned that the former Packaging Regulation triggered a wave of penalties being issued. For this reason, online retailers are asked to meet their new obligations in good time.

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