

THE NEW PACKAGING LAW: WHAT WILL CHANGE?

On 12 May, 2017, the new Packaging Law has passed the last parliamentary hurdle. The Bundesrat (Federal Council of Germany) approved the draft bill that was previously adopted by the Bundestag (German Parliament). The new Packaging Law will thus come into effect on 1 January, 2019.

The new regulations include some important changes for manufacturers and distributors. Those are described below.

NEW REGISTRATION REQUIREMENT (§ 9)

In the future, manufacturers will be required to register with a newly created national authority, the *Zentrale Stelle*, before putting packaging on the market. Packaging must not be placed onto the market without such a registration (filled packaging sold to consumers or to distributors).

The registered manufacturers will be published on the website of the *Zentrale Stelle* to ensure full transparency for all market participants.

NEW DATA REPORTING REQUIREMENT (§ 10)

In addition to registering, manufacturers will also have to immediately transmit packaging-related data to the *Zentrale Stelle*. At a minimum, the following data must be reported:

- // Registration number (provided by the *Zentrale Stelle* before)
- // Material and volume of the packaging put on market
- // Name of the packaging scheme contracted by the manufacturer to fulfil its Extended Producer Responsibility
- // Period of time for which the contract with a packaging scheme has been agreed

Unlike with the declaration of completeness (*Vollständigkeitserklärung*), there will be no de minimis threshold for this reporting requirement. Thus, even distributors of small quantities must report their data to the *Zentrale Stelle* in accordance with the above specifications.

Since the schemes also have to transmit their corresponding data to the *Zentrale Stelle*, simple data comparison will be possible, ensuring a high degree of transparency.



+ *Zentrale Stelle* will publish the registration of all distributors on their website = full transparency

COMMISSIONING THIRD PARTIES (§ 33)

In future distributors of packaging may entrust third parties with the fulfilment of their obligations, though they remain ultimately responsible for fulfilment. The third parties commissioned must be sufficiently reliable.

However, registration (§ 9 Packaging Law) and data reporting requirements (§ 10 Packaging Law) cannot be transferred to third parties, but they can still be prepared by competent third parties. The *Zentrale Stelle* is expected to set further specifications on the registration and reporting procedures.

CREATION OF A ZENTRALE STELLE (§§ 24-30)

The new Packaging Law includes the establishment of a national authority, the so-called *Zentrale Stelle*. On 28 June 2017, producers and distributors or their related associations have officially set up a foundation based in Osnabrück (*Stiftung Zentrale Stelle Verpackungsregister*) corresponding to the legal requirements. This foundation is currently under development in order to be fully operational on 1 January 2019. Schemes and operators of branch specific solutions are required to finance it according to their respective market share. The *Zentrale Stelle* is empowered with sovereign rights and, as an independent authority, is intended to increase the efficiency of the enforcement and to strengthen competition. The *Zentrale Stelle* is subject to technical supervision by the German Environment Agency (UBA).

The *Zentrale Stelle's* most important tasks include:

- // Registration of manufacturers, including online publication
- // Receipt and review of data reported by manufacturers and packaging schemes
- // Review of submitted declarations of completeness
- // Review of the quantity flow certificates submitted by the packaging schemes
- // Development of a minimum standard for measuring the recyclability of packaging (in consultation with the UBA)
- // Market share calculation for packaging schemes
- // Classification of packaging (finally defining which packaging needs to be contracted with packaging schemes)
- // Review of branch specific solutions
- // Inclusion of expert and other auditors in a public auditor registry
- // Development of audit guidelines

HIGHER RECYCLING TARGETS (§ 16)

The targets for the recycling of packaging will increase starting 1 January, 2019 and then again from 1 January, 2022. The packaging schemes are required to reach the following

minimum annual average rates for their contracted packaging volumes in terms of preparation for recycling and reuse:

Material	Previously	Starting 2019	Starting 2022
Glass	75%	80%	90%
Paper & cardboard	70%	85%	90%
Ferrous metals	70%	80%	90%
Aluminium	60%	80%	90%

Material	Previously	Starting 2019	Starting 2022
Beverage carton packaging	60%	75%	80%
Other composite packaging	60%	55%	70%
Plastics (material recycling)	36%	58.5%	63%

NEW AND REVISED DEFINITIONS (§ 3)

The new Packaging Law redefines certain terms:

- // Sales packaging must no longer necessarily physically occur as waste with the consumer in order to be considered as subject to be contracted with a packaging scheme.
- // Sales Packaging to be licenced with a packaging scheme will be defined as primary and secondary packaging used for sales, which occurs predominantly as waste with the consumer after use; these must then be 100 percent licenced with a packaging scheme.

- // In the future, secondary packaging (*Umverpackung*) will be treated as sales packaging.
- // Shipping packaging (to the consumer e.g. online-sales) is now clearly considered as sales packaging. It can not be pre-licensed.

MODULATED FEES (§ 21)

In the future, packaging schemes will also be required to take ecological criteria into account when determining licence fees. These so-called modulated fees are intended to encourage manufacturers to use packaging materials that consist (partially) of recycled materials or a high percentage of

materials that can be recycled. The criteria for this will be defined by the *Zentrale Stelle* under supervision of the Federal Environment Agency (*Umweltbundesamt*). Currently there are still many open questions regarding the exact implementation of this new fee concept.

Please do not hesitate to contact us for more information about the Packaging Law.

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