

THE NEW PACKAGING LAW: WHAT WILL CHANGE?

On 5 July 2017, the new Packaging Law was published after having passed the last parliamentary hurdle on 12 May. The *Bundesrat* (Federal Council of Germany) approved the draft bill that was previously adopted by the *Bundestag* (German Parliament). Most regulations of the new Packaging Law will come into effect on 1 January, 2019.

The new regulations include some important changes for manufacturers. Those are described below. Please note: Manufacturers as well as importers and online retailers are considered distributors that are responsible for bringing consumer packaged goods on the German market.

NEW REGISTRATION REQUIREMENT (§ 9)

In future, manufacturers will be required to register with a newly created national authority, the *Zentrale Stelle*, before putting packaging on the market. Packaged goods must not be placed on 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*. This also applies for changes of that data. 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
- Unlike with the declaration of completeness (*Vollständigkeits-erklärung*), 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.

According to the *Zentrale Stelle*, already the quantities of 2018 will be subject to the new data comparison. As the data for 2018 will only be available at the beginning of 2019, it will be examined by the *Zentrale Stelle*. However, all data collected in 2018 are subject to the requirements of the previous Packaging Ordinance (*Verpackungsverordnung*).



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

COMMISSIONING THIRD PARTIES (§ 33)

As before, 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 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*). This foundation is currently under development in order to be fully operational on 1 January 2019. The *Zentrale Stelle* plans to launch some of the platforms earlier, such as the registration site in summer 2018. 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 Federal Environment Agency (*Umweltbundesamt*).

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

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

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

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 to be licensed 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 licensed with a packaging scheme. Under the new Packaging Law, packaging waste doesn't necessarily need to end up with the consumer any-

more in order to be classified as packaging that needs to be contracted by 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 license 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. However, the *Stiftung Zentrale Stelle Verpackungsregister* will develop an interim minimum standard in the course of 2018 in cooperation with the *Umweltbundesamt* and the Federal Cartel Office.

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

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