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 and distributors. 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 the 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).

**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 scheme is in force

Unlike with the declaration of completeness (Vollständigkeitsklärung), 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 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).

**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 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).

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:

<table>
<thead>
<tr>
<th>Material</th>
<th>Previously</th>
<th>Starting 2019</th>
<th>Starting 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glass</td>
<td>75%</td>
<td>80%</td>
<td>90%</td>
</tr>
<tr>
<td>Paper &amp; cardboard</td>
<td>70%</td>
<td>85%</td>
<td>90%</td>
</tr>
<tr>
<td>Ferrous metals</td>
<td>70%</td>
<td>80%</td>
<td>90%</td>
</tr>
<tr>
<td>Aluminium</td>
<td>60%</td>
<td>80%</td>
<td>90%</td>
</tr>
<tr>
<td>Beverage carton packaging</td>
<td>60%</td>
<td>75%</td>
<td>80%</td>
</tr>
<tr>
<td>Other composite packaging</td>
<td>60%</td>
<td>55%</td>
<td>70%</td>
</tr>
<tr>
<td>Plastics (material recycling)</td>
<td>36%</td>
<td>58,5%</td>
<td>63%</td>
</tr>
</tbody>
</table>

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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