



Packaging Act adopted

The Packaging Act is coming! After the German Bundestag enacted the Packaging Act on 30th March 2017, the German Federal Council (Bundesrat) approved it on 12th May 2017. Now the signature of the Federal President as well as the announcement in the Federal Law Gazette will follow in the next weeks.

The law enters into force on 1 January 2019 and will replace the Packaging Ordinance currently in force from that day. The establishing of the Central Office, as foreseen by law, will already start one day after the law's announcement.

Below we provide you an overview of the most important amendments compared to the Packaging Ordinance.

Important contents

A broadening of product responsibility to cover identical non-packaging materials, which was planned as part of the Reusable Materials Act, is not included in the Packaging Act. Meaning that the Act deals with packaging only. For the first time secondary packaging is also generally classified as packaging to be included in the system mandatorily (§ 3).

1. Waste Management Objectives (section 1)

- To verify the effectiveness of the promotion of reusable packaging, the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB) will determine the proportion of drinks sold in reusable drinks packaging each year and publish the results.
- Furthermore, the objective is to achieve a proportion of bottled beverages sold in reusable drinks packaging of at least 70 percent.

2. Definitions (section 3)

- Distributors are defined as those who provide third parties with packaging. Thus in the case of so-called trademarks, those who merely produce the packaging on behalf of a trademark proprietor (where only the latter is mentioned on the packaging) are not distributors.
- Shipping (mail-order) packaging is not service packaging.
- Packaging shall only be deemed to be composite packaging if it consists of different materials that cannot be separated by hand and if no type of material exceeds 95 percent of the mass percentage.



3. System Attendance Responsibility (section 7)

- Refunds of system participation fees are only possible in the case of damage or non-saleability, for example in the case of spoilage.
- “Kickback payments” become illegitimate when the act comes into force. In other words system operators are forbidden from giving distributors a fee or other economic advantages if the distributors bring manufacturers into their system.
- Where packaging that is subject to the system participation obligation is introduced into a dual system, the manufacturer must state the material type and mass together with the registration number of the manufacturer, which the latter receives from the newly created Central Office.
- Manufacturers of service packaging may demand of the upstream distributors that they participate in a system. With the transference of the system attendance responsibility, the manufacturer's obligations under sections 9 to 11 also pass to the upstream distributor.

4. Industry Solutions (section 8)

- The rules in the 7th Amendment of the Packaging Ordinance remain largely unchanged. What is new is that notification of the industry solution must now be made to the Central Office. Furthermore, the notification is additionally to be accompanied by a list of all manufacturers who operate an industry solution.

5. Compulsory Registration (section 9)

- Manufacturers must register with the Central Office submitting their name, address, contact details, identification and tax registration numbers, brand names etc. before bringing packaging to market. Otherwise sales will be prohibited.
- This is a highly personal obligation of the manufacturer, which may not be commissioned to third parties (section 33).

6. Data Registration (section 10)

- All manufacturers are thus also required to communicate to the Central Office the data they provide in respect of system participation for their registered packaging without delay.
- This is a highly personal obligation of the manufacturer, which may not be commissioned to third parties (section 33).

7. Declaration of Completeness (section 11)

- The date of the annual lodgement of the Declaration of Completeness has been moved to 15 May (until now 1 May).
- The declaration of completeness is to be submitted together with the accompanying audit reports at the Central Office.

8. Obligations of the manufacturer and distributor to take back and to recycle (section 15)

- The definition of packaging containing hazardous substances has been adapted in Appendix 2 to section 3 para. 8 to the new GHS pictograms and hazard statements. In cases of sales or secondary packaging that is incompatible with the system or contains hazardous substances, as before, a certificate must be prepared by way of conformity with the take-back and recovery requirements and submitted to the competent regional authority on demand.



9. Recovery Quotas (section 16)

- The recovery quotas will be increased substantially in two steps; the first increase will take place on 1st January 2019 when the law comes into effect, the second increase on 1st January 2022. The dual systems are required to supply the following proportions of the licenced quantity in preparation for re-use or recycling:
 - 80 % by mass for glass; from 1st January 2022, 90 % by mass,
 - 85 % by mass for paper and cardboard; from 1st January 2022, 90 % by mass,
 - 80 % by mass for ferrous metals; from 1st January 2022, 90 % by mass,
 - 80 % by mass for aluminium; from 1st January 2022, 90 % by mass,
 - 90 % by mass for plastics (of which 65 % by mass and from 1st January 2022, 70 % by mass is mechanically recycled),
 - 75 % by mass for beverage carton packaging (own recycling quota for first time); from 1st January 2022, 80 % by mass,
 - 55 per cent by mass for other composites (excluding beverage carton packaging); from 1st January 2022 70 % by mass.
- The federal government will examine the recycling outcomes within three years from 1st January 2022, with the objective of further increasing the material-specific recycling quotas.

10. Notification Requirements (section 20)

- Extension of the notification requirement of the dual systems:
 - Quarterly interim announcement (until now plan quantity announcement)
 - Annual announcement (until now actual quantity announcement) by 1st June
- The announcements must be made to the Central Office allocated according to the manufacturer, on the basis of their appropriate registration number.

11. Environmental Licensing (section 21)

- The recycling of packaging and thus the prime objective of product responsibility – the consideration of the environmental effects of packaging over its entire lifespan and later recovery – are to be promoted. The Packaging Act provides that as part of the calculation of their licence fees, dual systems are required to create incentives to encourage the use of materials which are as highly recyclable as possible when producing packaging.
- To this end, the Central Office and the Federal Environment Agency (UBA) annually publish a minimum standard for measuring recyclability.
- The dual systems must report to the Central Office and the Federal Environment Agency (UBA) how they have implemented the provisions. The reports will be published after they have been inspected.



12. Central Office (sections 24-30)

- To ensure fair competition and a stable system, the manufacturers responsible for products are required to organise a Central Office to which comprehensive administrative responsibilities are assigned (a legal foundation under civil law).
- The Central Office is responsible among other things for:
 - Carrying out and publishing the registration of manufacturers,
 - Inspection of the Declaration of Completeness,
 - Inspection of the quantity flow certificates and quantities communicated by the dual systems,
 - Establishing and publishing minimum standards as a basis of assessment for ecological packaging (in collaboration with the UBA),
 - Calculation and publishing of the market shares to be assigned to the systems,
 - Cooperation with federal state authorities, the UBA and the Federal Cartel Office,
 - Registration and examination of experts,
 - Classification of packaging as mandatorily included in the system / returnable or beverage packaging.
- The dual systems and providers of industry solutions are responsible for financing the Central Office based on their respective market shares.
- The Central Office has to set up bodies typical of a foundation (board of trustees, management, administrative council and advisory council collection, sorting and recycling). The Central Office is supervised by the UBA. The most important body is the board of trustees, which establishes the principles of business policy and appoints and dismisses the management. It is composed of eight representatives of the manufacturers and distributors, two representatives of federal states, one representative of the local government central associations, one representative of the Federal Ministry of Economics and one representative of the Federal Ministry of Environment.
- The Central Office independently develops recommendations to improve the collection, sorting and recycling of recyclable waste, including quality assurance, and to deal with questions of particular importance for the interaction between local authorities and systems.

13. Deposit and take-back obligations for Disposable Beverage Packaging (section 31)

- The mandatory deposit is extended to carbonated fruit nectars and vegetable juices.
- Disposable beverage packaging must be labelled as being subject to a deposit permanently, clearly legibly and in easily visible locations before being brought to market.

14. Duty of Notification (section 32)

- Consumers must be informed about the further use of beverage packaging at the point of sale by "DISPOSABLE" or "REUSABLE" labels.
- The duty of notification at points of sale does not apply for reusable drinks packaging with a volume of more than 3.0 litres.



15. Provisions on administrative fines (section 34)

- The provisions on administrative fines were extended as follows:
 - Non-indication, incorrect, incomplete or late notification of industry solutions towards the Central Office,
 - Non-reintroduction of returned packaging by either reuse or recycling as per section 15 para. 3 s.1 and section 15 para. 4 s.3,
 - Non-provision or incorrect or incomplete provision of proof of fulfilment of the take-back and recycling obligations in cases of section 15 para. 4 sentence 5.

16. Commissioning of Third Parties (section 33)

- No Third Parties may be commissioned for the registration with the Central Office in accordance with section 9 or the submission of data reports in accordance with section 10.