

Requirements from the German Packaging Ordinance on Foreign Companies, supplying Goods to Germany^{1,2}

The German Packaging Ordinance was amended for the fifth time in 2008. The amendments have come into force gradually from April 2008 to April 2009. In the following, the responsibilities that foreign companies are facing in the course of the German Packaging Ordinance are presented, provided that they supply packaged goods to Germany and become the first organisation implying certain conditions to put these goods on the market in Germany (See point No. 9 of this advisory leaflet).

1. Key terms “Sales packaging” and “Private end consumer”

The Packaging Ordinance (abbreviated in German as VerpackV) contains take-back and recycling obligations for all types of packaging which are declared as transport, secondary packaging and sales packaging. Sales packaging is, by definition, all such packaging which is first unpacked and disposed of by the user of the packaged product and not already emptied at upstream trade levels.

Regarding sales packaging, it needs to be further differentiated between such for “private end consumers” (§ 6 VerpackV) and such for “commercial end consumers” (§ 7 VerpackV). The highest requirements apply for sales packaging, which is delivered to private end consumers. The definition of “private end consumer” has been expanded and specified through the 5th Amendment to the Ordinance as follows:

“Private end consumers are households and comparable places where waste occurs from packaging, in particular restaurants, hotels, canteens administration facilities, barracks, hospitals, educational establishments, charitable institutions, freelancers and typical places where waste occurs in the cultural sector such as cinemas, opera houses and museums, as well as in the leisure industry such as holiday complexes, theme parks, sports stadiums and service areas. Comparable places where waste accumulates are, in addition, agricultural operations and handicraft enterprises, from which the disposal of waste can take place via normal domestic collection containers for cardboard, paper, cardboard boxes and light packaging using no more than a maximum of one 1100 litre emptying container per material group at the usual household collection intervals.”

2. Sales packaging for private end consumers (business to consumer; b2c)

For b2c sales packaging (§ 6 VerpackV) exists the obligation of participation in an officially recognised dual disposal system (or a branch solution, see under Point 7).

This requirement aims explicitly at the organisation putting for the first time the packaged goods on the market because § 6 initiates with the words: “Manufacturers and distributors, who put sales packaging filled with goods, that typically produce waste at the private end consumer, on the market ...”.

¹ This paper is issued by the CCI “Südlicher Oberrhein (Freiburg)”, the CCI Koblenz and the Association of German Chambers of Industry and Commerce. The translation is kindly contributed by the CCI Koblenz.

² This DIHK leaflet is no legally binding document but of purely informative nature.

Only distributors of “service packaging” filled with goods receive the right to delegate this obligation to manufacturers or prior distributors of the service packaging. The term “service packaging” is not defined precisely in the Ordinance. According to the general view, this is the packaging which is filled manually at the last commercial level (e. g. paper bags for rolls or plastic carrier bags).

In cases a delegation of the obligations is not possible, there is, however, at least the right according to § 11 of the Ordinance to charge third parties, who then act on behalf of the obligated party.

Sometimes businesses also task other companies with the manufacture and packaging and, if required, the dispatch of their goods (contract packing [co-packing], made-to-order production). In such cases, the first organisation putting on the market is that company whose market name is given on the product or on the packaging, in case the name of the actual manufacturer is not given.

3. Transport, secondary packaging and sales packaging for commercial end consumers (business to business; b2b)

For transport packaging (§ 4 VerpackV), secondary packaging (§ 5 VerpackV) and sales packaging which, with (larger) commercial end consumers, produces waste (§ 7 VerpackV), it needs to be emphasised that for them the participation in a “recognised dual disposal system” is not possible and is also not necessary. Take-back and recycling of this packaging are to be organised rather by the participants themselves. With this, there are only in one case special documentation obligations (see Point 10) and no recycling quantities to be observed.

Basically, for all this commercial packaging, it applies that the supplier of the packaged goods is obligated to take back the empty packaging. The Ordinance, however, allows explicitly that the participants can arrange divergent agreements (e. g. that the customer organises disposal him/herself and the supplier reimburses this or the assigning of an external service provider).

Example: if fruit is supplied in large boxes to a wholesaler then these large boxes are, as a rule, b2b packaging; because the wholesaler then packages the fruit in smaller b2c packaging units in which the goods end up with the private end consumer.

There are no cross-boarder take-back obligations.

4. Product users both in the private and in the commercial sector

A frequent case in practice is that the organisation first putting the packaged goods on the market has possibly to reckon with his goods ultimately being used partly by b2c consumers and partly by b2b consumers. If for example his products are used by handicraft enterprises of different sizes, a part of these consumers are classified as “private” and a part as “commercial”.

With such constellations the organisation first placing the goods on the market should as far as possible quantify these two cases and then participate in the b2c part of his/her packaged goods only in a dual disposal system. The quantification is often possible in the form of an estimate only with which, in case of doubt, the b2c part should be assumed to be somewhat higher. Market or branch studies or estimations by outsiders can also be drawn on.

5. Overview of the officially recognised dual disposal systems

Besides the “Dualen System Deutschland GmbH (DSD)”, which is well-known through its trademark Green Dot, there are in the meanwhile eight further dual systems officially recognised in all 16 German Federal States. They are listed with their contact data in **Annexe 1** to this advisory leaflet as well as on the Internet page <http://www.ihk-ve-register.de>.

The systems must cover b2c sales packaging through proximate household collection systems, for which frequently “yellow sacks” or “green bins” are employed. All systems cooperate with the collection of the packaging and must therefore settle their reciprocal claims (depending on market shares) among themselves.

6. Labelling obligation, e. g. “Green Dot”, is dispensed with

Since 01 January 2009, the previous obligation to label b2c packaging in Germany with the “Green Dot” or a symbol of another dual disposal system no longer exists. Nevertheless, whoever wishes to use the symbol of the Green Dot can, for this, negotiate a separate licence agreement with the DSD GmbH (even if he/she is not a customer of DSD but takes part in another dual disposal system).

7. Two exemptions with regard to the obligation to participate in a system for b2c sales packaging

According to § 6 Abs. (1) VerpackV b2c sales packaging can also be taken back and recycled by itself. Provided that, with this, the requirements of Appendix 1 of the Ordinance (above all the required recycling quotas) can be verifiably observed, there exists for packaging, which was previously compulsorily registered with a dual disposal system, a right to the repayment of the system participation fees.

In accordance with § 6 Abs. (2) VerpackV, in place of a participation in a dual disposal system, branch-related solutions are also permitted in which, however, high demands are set up. These branch-related solutions cover in particular expert certificates, official notifications, the observation of recycling quotas as in Appendix 1, etc. For b2c sales packaging, which also ends up in “real” private households, a participation in such branch solutions is not permitted. They therefore come into question only for goods which are delivered exclusively to “comparable places where waste originates” (e. g. in hospitals or doctors’ practices).

8. Special provisions for certain packaging

Separate treatments are contained in the Packaging Ordinance for reusable packaging as well as for disposable drinks packaging subject to a deposit (§ 9 VerpackV) and for the packaging of filling commodities containing contaminants (§ 8 VerpackV), whereby this term is defined in more detail in the Packaging Ordinance.

These separate treatments are not represented in detail in this advisory leaflet.

An obligation to participate in a recognised dual disposal system or in a branch solution within the sense of § 6 VerpackV does not exist for this packaging.

In contrast, for disposable drinks packaging subject to a deposit, a participation in a nationwide operative deposit system is laid down, which enables the processing of a mutual deposit reimbursement entitlement. Further information on this deposit system can be found in the Internet under <http://www.dpg-pfandsystem.de>.

9. Supply of goods to Germany with regard to the obligations of the “first organisation putting the packaged goods on the market”

If a foreign company supplies packaged goods to Germany, it needs to be clarified who, as “first organisation putting packaged goods on the market”, has to meet the various requirements of the German Packaging Ordinance. This is not clearly described in the Ordinance, for which reason, alternatively, the question of which organisation is the owner of the goods at the moment these packaged goods cross the border can be drawn on as criterion:

- If the change in ownership from the German point of view takes place abroad, then the German consignee is the “first organisation putting the packaged products on the market” in Germany.
- If, on the other hand, the change of ownership takes place first of all in Germany, e. g. through a delivery of goods “free house”, for which the foreign seller organises the transport and, if required, takes care of the customs formalities, then the foreign seller becomes the first organisation putting the packaged products on the market in Germany, because he/she operates on German soil, that is within the geographical limits of the German Ordinance and the handover of the goods takes place in Germany. Thus he/she must also fulfil the obligations of the first organisation to market the goods. The same applies for foreign companies who, through direct marketing (e. g. Internet trading) send goods directly to private end consumers in Germany.

This differentiation can be drawn on for foreign suppliers from all countries, that is from EU Member States as well as Non-EU Countries.

10. Obligation to submit a “completeness statement” with the exceeding of certain volume thresholds

Whoever first markets goods in b2c sales packaging must, in accordance with § 6 VerpackV, verify annually by 01 May at the latest whether he/she has to submit a so-called “completeness statement” (CS; in German: Vollständigkeitserklärung, VE) for the previous calendar year. However, this applies only with the exceeding of at least one of the following volume thresholds:

- more than 80 tonnes per year of glass packaging or
- more than 50 tonnes per year of paper/cardboard/carton packaging or
- more than 30 tonnes per year of packing made from aluminium, tin foil, plastics and composites (sum of these four materials).

These quantity details refer to the weight of empty b2c packaging. If a company undercuts all the given volume thresholds it does not have to submit a completeness statement. Sole exception would be if it was specifically requested in written form by the responsible waste authority to submit a CS.

The completeness statements must contain the following:

- the quantities of b2c and b2b sales packaging put into circulation, differentiated according to packaging material
- breakdown of the b2c packaging to the recognised dual disposal systems

- material type and quantities in branch solutions (§ 6 Para. (2) VerpackV) as well as the name of the person responsible for the branch solution
- brief general details on the recycling of the b2b sales packaging
- details on the external examiner and the date of the examination

Whoever puts no b2c but rather b2b packaging on the market, regardless of what quantity, does not have to submit a completeness statement!

The obligation to submit the statement, analogous to § 6 VerpackV, is addressed to the first organisation to put the packaged goods on the market. Sole exception also here: distributors of service packaging filled with goods have the right to delegate their obligation to submit to the manufacturer or prior distributor of the service packaging analogous to the obligation to participate in a system.

The completeness statements of the companies must be examined by a third party ("audited"). Certified accountants, tax advisers, sworn auditors as well as specialists within the terms of the Packaging Ordinance are authorised for this. To this they require a qualified electronic signature in accordance with the German Signature Law or in accordance with the European Signature Directive (Directive 1999-93-EC, Official Gazette L 13 dated 19.01.2000).

The audited completeness statements must be electronically submitted to or lodged with the responsible chamber of commerce and industry (CCI) [in German = IHK] annually. Further information on this can be found on the following homepage: <http://www.ihk-ve-register.de>

The names and addresses of the firms who have submitted a statement are published there. The completeness statements themselves appear only in a secure intranet, into which the dual disposal systems also enter their customer data and their quantities of packaging. The CCI has no access and no reading rights for the data of the dual systems and, conversely, also the dual systems have no possibility of viewing completeness statements or data of other dual systems lodged with the CCI. Only the responsible waste authorities have reading rights for their monitoring tasks for all the said CS data.

11. Further information

The procedure for the submission of the completeness statements is described in detail in **Annexe 2**.

Supplementary to this, further information, especially for the external examiners with regard to the employment of the legally required qualified electronic signature, is contained in **Annexe 3**.

Contact person at German CCIs [IHKs] for foreign companies as well as further information can be called up via the Internet page <http://www.ihk-ve-register.de>.

Foreign companies can also contact the respective chamber of foreign trade (CFT) [in German = AHK] which can be found via <http://www.ahk.de>.

(As at: 12/2009)

Annexe 1: Summary of the officially accredited [German] dual disposal systems for sales packaging in accordance with § 6 VerpackV in alphabetic order

BellandVision GmbH

Telephone: +49 (0)9241 4832-0
E-Mail: info@bellandvision.de
Internet: www.bellandvision.de

Der Grüne Punkt – Duales System Deutschland GmbH

Telephone: +49 (0)2203 937-0
E-Mail: info@gruener-punkt.de
Internet: www.gruener-punkt.de

EKO-PUNKT GmbH

Telephone: +49 (0)2161 24763-30
E-Mail: info@eko-punkt.de
Internet: www.eko-punkt.de

INTERSEROH Dienstleistungs GmbH

Telephone: +49 (0)2203 9147-0
E-Mail: info@interseroh.com
Internet: www.interseroh-isd.de

Landbell AG für Rückhol-Systeme

Telephone: +49 (0)6131 235652-0
E-Mail: info@landbell.de
Internet: www.landbell.de

Redual GmbH & Co. KG

Telephone: +49 (0)2772 580098-441
E-Mail: info@redual.de
Internet: www.redual.de

Veolia Umweltservice Dual GmbH

Telephone: +49 (0)2133 88500-60
E-Mail: info-dual@veolia-umweltservice.de
Internet: www.veolia-umweltservice.de/dual

Vfw GmbH

Telephone: +49 (0)2234 9587-0
E-Mail: info@vfw-gmbh.eu
Internet: www.vfwsystems.com

Zentek GmbH & Co. KG

Telephone: +49 (0) 2203 8987-555
E-Mail: dsz@zentek.de
Internet: www.zentek.de

Annexe 2: Instructions for the lodging of the completeness statement (CS)

1. Determination of the CS data for the reporting year

The quantity of the sales packaging marketed by you in the preceding year needs to be declared.

If at least one of the minimum amounts (volume thresholds) given under No. 10 is exceeded, then a comprehensive completeness statement is to be submitted. You must therefore not only document the packaging which lies above the respective minimum amounts but also all sales packaging of the reporting year.

These amounts must be itemised according to the types of material (glass, paper/cardboard/carton, tin foil, aluminium, composites, plastics, other materials). In addition it must be differentiated according to the target groups (b2c – private end consumer, b2b – commercial end consumer) and, with b2c sales packaging, according to the type of the participation (in dual systems or in branch solutions).

The details must be plausible and verifiable. Appropriate records and documentation are to be prepared for the external examiner.

2. Agreement of the determined data with the examiner

Please note that the examiner has to confirm (to audit) the accuracy of your data for the respective reporting year in his audit report without objections.

This audit report must therefore be available to you already at the point in time of the CS submission so that the date of the audit report can also be given in the CS. For this you must contact the examiner before the input of your quantity data into the CS register. You should enter into the CS register data agreed with the examiner only.

3. First-time registration in the CS register (register company)

Please take particular note of your value added tax identification number (VAT Ident. No.). It is important that you use the same VAT Ident. No. in the CS register and for the conclusion of the contract with the dual systems. The VAT Ident. No. is no longer modifiable after finalisation of the first registration!

Please enter the company designation as it is recorded in the register of companies.

A responsible person must be named with the registration since the Ordinance lays this down and since communications from the CS register will be directed to the E-mail address of this person.

The registration is required once only. With the exception of the VAT Ident. No. the company data can be modified at a later date via the basic data mask in the company module.

4. Registration in the system (Login)

After having registered successfully you can log on yourself using the access data communicated by your E-mail and assign a password for your access account (Login).

5. Input of the CS data

The details of quantities are stated in kilograms (not in tonnes).

Please take particular note on the input of the material-specific data of the correct assignment to the appropriate material fraction and to the respective dual system.

The quantities details for § 6 Para. 2 VerpackV (branch solutions) need to be given as total quantities for all branch solutions, in which your company has participated in the reporting period. A listing of the distribution of the quantities to several branch solutions is thus not required and is not planned in the input system.

Commercial sales packaging (b2b) in accordance with § 7 VerpackV are to be entered for the first time for the reporting period 2009. These data are not relevant for the first question, whether the minimum amounts with b2c sales packaging have been exceeded. If, however, a CS filing is necessary due to the b2c packaging quantity, then (and only then) the amount of the b2b sales packaging in the CS must also be declared.

The input of the packing unit data has to be concluded using "Save". Only through this the data are taken over into the CS register.

6. Generation and download of the verification certificate with details from the completeness statement (CS pdf)

Only after storage of the packaging data the packaging data pdf file (verification certificate with details from the completeness statement) can be generated from the database.

The thus generated and no longer modifiable packaging data pdf file can now be downloaded for auditing.

Should CS data need to be corrected subsequently; the complete process from the input of data (Step 5) down to the download of the CS data pdf file (Step 6) has to be repeated.

With the generation of a new CS pdf file all previous versions become invalid and are no longer accepted by the CS register – even with an already successfully lodged and published CS! Thus an already lodged CS is moved to the archive and the company is temporarily no longer shown in the public register.

Please save the CS verification certificate (CS pdf file) initially directly to your computer without opening it in the beginning. For later copying and movement of the data you should use exclusively the standard Windows commands. Since, if you were to save the CS verification certificate using the "Save under" function with, for example, 'Acrobat Professional', then this would modify the original file and would have the result that, with the uploading into the system it could no longer be recognised as the original document. Using the 'Adobe Acrobat Reader' software this problem does not occur. Please point this out to your examiner.

7. Communication of the CS pdf file to the examiner

Please note that the CS pdf file is communicated without delay and securely to the examiner selected by you. You are free to choose the type of communication of the CS pdf file, it must, however, be effected as a file.

8. Qualified electronic signing of the CS pdf file by the examiner

The auditing is effected as the examiner – after comparison of the details with his/her examination documents – electronically signs the CS pdf file received (comp. the supplementary information on the following pages). With this he/she can accept and sign the complete CS pdf file only. Thus he/she can neither limit him/herself to parts [of the file] nor carry out modifications.

The CS Register accepts only the standard “PKCS#7” for the signing of the completeness statement. This standard is met by all accredited signatures with the German Federal Network Agency. Whether foreign signatures are suitable for CS auditing should, in case of doubt, be clarified with the contact persons at the CCI or the CFT.

The digitally signed CS pdf file or the signature file must now be communicated back electronically, e. g. on a data carrier, to the obligated company.

9. Lodging of the signed CS pdf file in the CS register - and with the responsible CCI

After having received the CS pdf file or the signature file you must again log into the CS register in order to be able to upload the signed CS pdf file or signature file into the system.

The CS register accepts the signed CS pdf file or signature file only if, first, the pdf document remains unchanged and, second, the qualified signature is valid.

With the upload, the completeness statement is considered legally as submitted. The input of the signed CS into the CS register is documented with a time stamp and is visible for the responsible monitoring authority.

The CS submitted by you is presented automatically to your responsible chamber of commerce and industry (CCI). With the release of the CS by the CCI your company is placed in the list of companies which, since 02 May 2009, is visible in the Internet. The name of the company, the postcode and the location are published only, all further details remain inaccessible to the public.

Annexe 3: Supplementary information for the examiner

Which signature configuration is required and where can it be obtained?

The required signature configuration is made up of three components:

1. An individual signature chip card of a trust centre conforming with signature law. The card is not transferable and must be applied for personally or per post identity procedure [in Germany "Post-Ident-Verfahren"]. Providers [in Germany] are, for example, D-TRUST, S-TRUST, Signtrust, TC Trustcenter, Telesec.
2. A chip card reader with own keyboard and PC-SC or CT-API interface. Suitable products are, for example, Reiner SCT cyberJack Pinpad, Reiner SCT cyberJack e-com, SCM Chipdrive Pinpad, Kobil KAAAN advanced, Kobil KAAAN professional.
3. Software for qualified signing of files in accordance with PKCS#7 standard. Suitable products are, for example, SecCommerce SecSigner 2.0.0, OPENLiMiT CC Sign Basiskomponente 2.1. or digiSeal Office Pro 2.5.0

A list of all signature law conform trust centres, card readers and signature application components is published on the website of the German Federal Network Agency (<http://www.bundesnetzagentur.de>).

Numerous CCIs offer a comfortable signature service. Here you can apply for an individual CCI card from the firm D-TRUST and, at the same time, order a "Reiner SCT cyber Jack Pinpad" card reader.

Please note that the Packaging Ordinance stipulates a **qualified** electronic signature. Completeness statements with ordinary or sophisticated electronic signatures will be rejected by the system. As the identifiers are similar, mistakes can easily happen!

Please allow for a lead time: following the order there can be a delay of 2 to 4 weeks until you receive your signature card.

How is the CS verification certificate signed?

Prerequisite is that a signature software is installed which enables pdf documents to be signed in PKCS#-7 format. For this there is a series of standard solutions which can be obtained free on the market. A list of all approved signature application components can be viewed on the following Internet page of the German Federal Network Agency:

http://www.bundesnetzagentur.de/enid/9413273cc0c13af7235c22de0c37b02d,0/Bestaetigung/Signaturanwendungskomponenten_vv.html

However, not all the solutions listed there support the PKCS#7 standard. In doubt the product description of the respective manufacturer should provide information on the compatibility with the technical standards. Information on the operation of the software, in particular on the signing of documents in PKCS#7 format can be taken from the respective manual provided. In addition, every manufacturer offers technical support.

The ending of signature files in PKCS#7 format, depending on the software employed, can vary. The following are, for example, customary: ".p7m, .p7s, .p7k or .pkcs7". Following successful signature of the pdf verification certificate this must be transmitted to the CS obligated company in electronic form and can then finally be uploaded by the company for lodgement in the CS register.

How to avoid errors:

The most important rule for the employment of the qualified electronic signature is: the file to be signed may not be modified.

Do not undertake any modifications, do not attach any files!

The CS register accepts exclusively an unmodified pdf document with a valid electronic signature in PKCS#7 format.

Do not sign the verification certificate more than once!

The CS verification certificate, according to § 10 Para. 1 VerpackV, has to be signed electronically by one examiner only. The written verification certificate on the basis of which the input of the CS data takes place can, on the other hand, be signed by several persons. The verification certificate does not, however, belong to the completeness statement.

Do not encode your signature!

Possibly an option for the encoding of the signature content appears in the signing program. A file signed in this way cannot be read by the CS register as the appropriate decoding code is missing. Therefore the encoding option in the signing software must be deactivated.

Do not use the Acrobat function “Document” /“Sign”!

In addition to the PKCS#7 standard format there are also further possibilities for signing documents electronically. For example, the signature elements can be filed directly in the pdf document via the function in Adobe Acrobat. These files cannot be read by the CCI CS register and are therefore to be rejected with appropriate return information.

Further technical information

Despite observing these instructions error messages can appear in individual cases with the uploading of the signature file into the CS register. Information on such application-specific and technical questions can be found under:

https://www.ihk-ve-register.de/inhalt/fragen_antworten/6_Technik/index.jsp

If, nevertheless, problems occur the CCI partners are ready to provide assistance.

Editor: “DIHK” (Association of German Chambers of Industry and Commerce),
Breite Straße 29, 10178 Berlin, Deutschland (Germany).

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