

2021 German Packaging Act Amendment: changes relevant for online retail

It's official: the German Bundestag has adopted the Amendment to the Packaging Act. The amended Act has become law on 3 July 2021, with transitional periods applying to some changes. In authoring this Amendment, the Environment Ministry (BMU) has sought to transpose

EU law into German law while strengthening the ecological focus of the Packaging Act. Online retailers are affected by two key aspects introduced by the Amendment to the Packaging Act:



New duty of control from 1 July 2022 for operators of electronic marketplaces

- Retailers who make use of electronic marketplaces (e.g. Amazon, eBay) to sell their goods to German consumers must ensure that the packaging is **participating** in (i.e. is **licensed with**) a dual system before distributing their packaged goods.
- In addition, packaging must also be **registered with the Central Agency Packaging Register** (LUCID database) beforehand.
- If the retailer fails to comply with these regulations, a **prohibition on the sale of these goods** applies to the retailer and the marketplace operator alike.
- **Specifically:** Operators of online marketplaces may no longer offer the goods themselves or otherwise enable their sale if the retailer in question is not actively participating in a dual system.
- Accordingly, this represents a **duty of prior verification** of system compliance for operators of online marketplaces. Operators may themselves decide on the most appropriate way to verify such participation. Typically, however, presenting the **confirmation of dual system participation** issued to the respective manufacturer should be sufficient (cf. Packaging Act section 7 (1), sent. 3).
- Following a one-year transitional period, these new regulations apply **from July 2022**.



Changes in responsibilities for fulfilment service providers + new duty of control from 1 July 2022

- Fulfilment service providers are to be granted a blanket exemption from licensing duties. Instead, the merchant commissioning their services will be obliged to fulfil the requirements of the Packaging Act.
- **Specifically:** Even if the activities performed by a fulfilment service provider include packaging goods into mail-order packaging subject to licensing requirements, the registration and licensing duties as applicable to this shipping packaging are instead assigned to the distributor of the goods on whose behalf the fulfilment service provider is acting.
- In the same way as for operators of electronic marketplaces (see 1 a), fulfilment service providers must also demand prior **proof of system participation** from merchants commissioning their services and likewise have a **duty to verify this participation**.

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- If no proof is forthcoming, then services such as goods warehousing, packing, addressing and shipping for third-party goods must not be provided by the fulfilment service provider. Here too, this is equivalent to a **ban on sales**.
- Merchants are to receive the data that they require for packaging licensing from their fulfilment service providers.
- The new regulations apply **from July 2022**, also following a one-year transitional period.

Note that the provisions of the new Act also apply to foreign merchants who use online platforms or fulfilment to participate in the German market. This approach aims to make it easier to apply the law to foreign merchants and therefore establish a more level playing field.

Extra: Changes in relation to transport packaging

Transport packaging is packaging that stays within the wholesale sector, such as pallets or large cardboard secondary packaging. These have not been subject to dual system requirements to date and this situation will continue – although the new Act does assign their distributors three new duties.

- 1. Duty to provide information, since 3 July 2021:** Final distributors of transport packaging must inform end users about options for returning this packaging and the purpose of these activities.
- 2. Duty to provide proof, from 1 January 2022:** Distributors of transport packaging must maintain complete records of their compliance with applicable take-back and recycling requirements.
- 3. Duty to register, from 1 July 2022:** Distributors of transport packaging must register with the LUCID packaging registry. A failure to register will trigger a sales ban.



Please note: Anyone who puts transport packaging on the market does not have to license it with a dual system, but according to the Packaging Act, they still have to ensure that it is taken back and recycled properly in accordance with the principle of producer responsibility (§15 VerpackG). Alongside the licensing of packaging subject to dual system requirements via Lizenzero, Interseroh is also an experienced provider of transport packaging take-back and recycling services