

Overview of the German Packaging Ordinance

The German Packaging Ordinance was amended in 2014 for the seventh time. The key requirements for companies which result from this amendment are presented below.

1. Key terms: "sales packaging" and "private end consumers"

The Packaging Ordinance [*Verpackungsverordnung*] contains requirements for the recovery and recycling of all types of packaging, particularly transport packaging, grouped packaging and sales packaging. Sales packaging is defined as packaging which is unpacked and disposed of by the user of the packaged product, instead of being emptied at an earlier stage.

A distinction is also made between sales packaging for "private end consumers" (§ 6 of the Packaging Ordinance) and "commercial end consumers" (§ 7 of the Packaging Ordinance). The strictest requirements apply for sales packaging which is delivered to "private end consumers." The definition of "private end consumer" has already been extended and specified as follows in the 5th Amendment to the Ordinance:

"Private end consumers are households and comparable points of accumulation for packaging, particularly restaurants, hotels, cafeterias, government offices, barracks, hospitals, educational institutions, charitable organizations, professional offices, typical points of accumulation in the cultural sector, such as cinemas, operas and museums, as well as points of accumulation in the recreational sector, such as resorts, theme parks, stadiums and rest areas. Comparable points of accumulation also include agricultural and crafts businesses whose packaging material can be disposed of in a waste collection cycle typical for households using household-typical collection bins for paper, cardboard, cartons and lightweight packaging using a transfer bin of no more than 1100 liters per material group."

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

For b2c sales packaging (§ 6 of the Packaging Ordinance), there is a duty to participate in an officially recognized dual disposal system or an industry solution (see No. 7).

This requirement is expressly directed at the initial marketer of the packaged merchandise, as § 6 of the Packaging Ordinance begins with the words: "Manufacturers and distributors who initially market sales packaging, containing merchandise, which typically accumulates with the private end consumer...".

Only distributors (vendors) of "service packaging" which contain merchandise have the right to delegate this responsibility to the manufacturer or prior distributor of the service packaging. The term "service packaging" is not precisely defined in the Ordinance. According to the general understanding, this term refers to packaging which is filled by hand at the point of sale, e.g. breadbaskets and plastic shopping bags.

Insofar as these duties cannot be delegated, the initial marketer has the right, in accordance with § 11 of the Packaging Ordinance, to engage third parties to act on behalf of the obligated party.

In some cases, companies engage other companies to manufacture, pack and even ship their merchandise, e.g. in the case of contract bottling or contract manufacturing. In such

cases, the company whose brand name is mentioned on the product or the packaging is considered to be the initial marketer, unless the name of the actual manufacturer is given.

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

For transport packaging (§ 4 of the Packaging Ordinance), grouped packaging (§ 5 of the Packaging Ordinance) and sales packaging accumulated by (large) commercial end consumers (§ 7 of the Packaging Ordinance), there is no statutory duty to participate in a "recognized dual disposal system." Rather, the collection and recycling of this packaging is to be arranged by the participants themselves. There are no documentation requirements in this regard (with one exception, see No. 10), and there are no recycling quotas to meet.

The general rule for all such commercial packaging is that the supplier of the packaged merchandise is required to take back the empty packaging. For pragmatic reasons, however, the Ordinance expressly allows participating companies to make different arrangements, e.g. for the customer to arrange disposal itself and for the supplier to compensate the customer for this disposal, or for the engagement of an external service provider.

An example: if fruit is supplied to a wholesaler in large crates, those crates are generally b2b packages, since the wholesaler then packs the fruit into new, smaller b2c packaging units, in which the merchandise is sold to private end consumers.

Cross-border recovery and disposal obligations do not exist.

4. Products with both "private" and "commercial" users

A frequent case in practice is when the initial marketer of packaged merchandise must anticipate that its merchandise will ultimately be used in part by b2c and in part by b2b users. For example, if its products are used by crafts businesses of various sizes, some of those users will be classified under the Ordinance as "private" while others will be classified as "commercial."

In such cases, the initial marketer should try to quantify these two cases to the best of its ability and then participate in a dual disposal system only to the extent of the b2c share of its packaged merchandise. Often, this quantification can only be performed in the form of an estimate, and in case of doubt, the b2c share should be assumed to be somewhat higher. Market or industry studies, as well as external assessments, may be used to ascertain the breakdown.

5. Overview of officially recognized dual disposal systems

In addition to the first dual system ("Duales System Deutschland GmbH – DSD"), which became famous in the 1990's due to its "green dot" trademark, a number of other dual systems have now been officially approved in all 16 German Federal States. They are listed, along with their contact information, in **Annex 1** to this Notice and on the website of the DOC Register (<http://www.ihk-ve-register.de>).

These systems are required by law to recover b2c sales packaging using household-like collection systems, to which end designated collection containers are used for recycling. All systems cooperate in the collection of packaging and are therefore required to set off their mutual claims (based on market share).

6. The duty to label packaging, e.g. with the "green dot," no longer applies

The former obligation to clearly label b2c packaging in Germany with the "green dot" or the symbol of another dual disposal system no longer exists as of 1 January 2009. However, anyone who would like to use the "green dot" symbol nevertheless may have to conclude a separate license agreement with DSD GmbH, even if it is otherwise not a DSD customer, but rather a participant in a different dual disposal system.

7. Exceptions from the requirement to participate in a dual system for b2c sales packaging

In accordance with § 6(1) of the Packaging Ordinance, b2c sales packaging could only be taken back and recycled by the marketer itself until 30 September 2014. Provided the requirements of Annex I to the Ordinance are met in demonstrable fashion (especially the required recycling quotas), the marketer was formerly entitled to a refund of its system participation fees for this packaging, which had to be registered with a dual disposal system in advance. With the 7th Amendment to the Ordinance, this option is no longer available, effective 1 October 2014!

In accordance with § 6(2) of the Packaging Ordinance, industry solutions are acceptable in lieu of participation in a dual system, but strict requirements apply for such industry solutions. Industry solutions are not permitted for b2c sales packaging delivered to "real" private households. In other words, they are only a possibility for merchandise which is delivered exclusively to "comparable points of accumulation," e.g. to hospitals or medical practices.

The 7th Amendment to the Packaging Ordinance substantially restricts this option and effectively abolishes the previous industry solutions as of the end of 2014. New industry solutions for 2015 onward are only possible subject to very strict requirements, which must be extensively documented by all participating companies, as illustrated by the statutory rules cited below:

"The duty of manufacturers and distributors in accordance with Paragraph 1 to participate in a system in accordance with Paragraph 3 shall not apply insofar as they take back and recycle the sales packaging marketed thereby in accordance with Paragraph 8 Sentence 1, in the case of points of accumulation equivalent to private households in accordance with § 3(11) Sentences 2 and 3 which they demonstrably supply either themselves or through interspersed distributors. The manufacturer or distributor must document, through the certification of an expert mentioned in Annex I Number 2 Paragraph 4, that it or a third party engaged thereby for the purpose

1. has established a suitable industry collection structure for all points of accumulation supplied thereby in accordance with Sentence 1, which ensures the routine recovery, free of charge, of all sales packaging marketed thereby in that location in accordance with Paragraph 8 Sentence 1;

2. has written confirmations from all points of accumulation supplied thereby in accordance with Sentence 1 as to the integration thereof in this collection structure;

3. ensures the recycling of sales packaging in accordance with the requirements of Annex I Number 1 and 4.

The certification, together with the confirmations in accordance with Sentence 2 Number 2, is to be presented at least one month prior to the commencement of recovery to the competent supreme state authority, or to an authority designated thereby. The commencement of recovery and all modifications in the recovery system are to be reported in writing. Paragraph 5 Sentence 3 and Annex I Number 1, Number 2 Paragraph 4 and Number 4 shall apply accordingly. In addition, the points of accumulation in accordance with Sentence 1 are to be designated in the annual documentation in accordance with Annex I Number 4 with the precise address; moreover, written documentation from all points of accumulation in accordance with Sentence 1 is to be attached concerning the quantities of sales packaging of the relevant manufacturer or distributor delivered thereto."

8. Special rules for specific packaging

The Packaging Ordinance contains special rules for reusable packaging, disposable beverage packaging requiring a deposit (§ 9 of the Packaging Ordinance) and packaging for merchandise containing hazardous materials (§ 8 of the Packaging Ordinance), although that term is not defined any further in the Packaging Ordinance. This Notice will not include a closer examination of these special rules.

A duty to participate in recognized dual disposal systems or industry solutions in terms of § 6 of the Packaging Ordinance does not exist for these types of packaging. Instead, participation in a nationwide deposit system is prescribed for disposable beverage requiring a deposit, which allows for the settlement of mutual deposit refund claims. Further information on this deposit system can be found online at <http://www.dpg-pfandsystem.de>.

9. Delivery of merchandise to Germany with respect to the duties of the "initial marketer of the packaged merchandise"

When a foreign company delivers packaged merchandise to Germany, clarification is necessary as to who is responsible, as the "initial marketer," for meeting the various requirements of the German Packaging Ordinance. This is not clearly described in the Ordinance, so that the identity of the company which owned the merchandise at the moment the packaged merchandise crossed the border into Germany may be used as an alternative criterion:

- If the transfer of ownership took place while the merchandise was still abroad, the German recipient is considered to be the "initial marketer" in Germany.
- If, on the other hand, the transfer of ownership took place in Germany, e.g. if the merchandise is delivered "free domicile" and the foreign vendor arranges the shipment and takes care of any formalities in customs law, the foreign vendor becomes the initial marketer in Germany since it is acting on German soil, i.e. within the scope of the German Ordinance, and since delivery of the merchandise also takes place in Germany. Accordingly, the foreign vendor must comply with the requirements of the "initial marketer." The same applies for foreign companies which ship merchandise directly to private end consumers in Germany through direct sales, e.g. online sales.

This distinction applies for foreign suppliers from all countries, i.e. both EU member states and non-EU countries.

10. Duty to submit a "Declaration of Completeness" when certain quantity thresholds are exceeded

In addition to participating in a dual system, § 6 of the Packaging Ordinance requires anyone who has marketed b2c sales packaging to ascertain each year whether the submission of a "Declaration of Completeness" (DOC) is necessary for the previous year. The deadline is 1 May. The duty to submit a DOC only applies if at least one of the following three quantity thresholds is exceeded:

- more than 80 tons per year of glass packaging; or
- more than 50 tons per year of paper/cardboard/carton packaging; or
- more than 30 tons per year of packaging made of aluminum, tinplate, plastics and composites (sum total of these four types of materials).

This quantity data refers to the weight of empty b2c packaging. If a company falls short of all of the aforementioned quantity thresholds, it is not required to submit a Declaration of Completeness. The only exception would be if the company was expressly asked by the competent waste disposal authority to submit a DOC.

The Declaration of Completeness must include the following:

- the quantity of b2c and b2b sales packaging marketed, sorted by packaging material;
- a breakdown of b2c packaging among the recognized dual disposal systems;
- type and quantity of materials in industry solutions (§ 6(2) of the Packaging Ordinance) and the name of the persons responsible for the industry solution;
- brief general information on the recycling of b2b sales packaging;
- information about the external auditor and the date of the audit.

Anyone who markets only b2b packaging, rather than b2c packaging, is not required to submit a Declaration of Completeness (DOC). Anyone who does not market b2c packaging, only b2b packaging, is not required to submit a Declaration of Completeness (DOC).

In accordance with § 6 of the Packaging Ordinance, the duty to submit the DOC applies to the marketer of the packaged merchandise. The only exception is distributors of service packaging containing merchandise may delegate their responsibility to submit a DOC to the manufacturer or prior distributor of the service packaging, similar to the case for the obligation to participate in a dual system.

Companies' DOCs have to be audited ("certified") by external third parties. Auditors, accountants and experts in terms of the Packaging Ordinance are authorized to act in this capacity. To this end, they need a qualified electronic signature in accordance with the German Signature Act and the European Signature Regulation (Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014).

The certified DOCs have to be submitted and posted electronically with the competent Chamber of Industry and Commerce (CIC). Further information in this regard can be found on the website of the DOC Register, (<http://www.ihk-ve-register.de>), the central system for the submission and posting of DOCs.

The names and addresses of companies which are required to submit a declaration are published in the register. The Declarations of Completeness themselves are only posted in a protected intranet, into which the dual disposal systems also enter their customer data and the packaging quantities of their customers. Data held by the dual systems or the CIC are not centralised. The CIC has no access to the dual systems data, nor do the dual systems have access to the Declarations of Completeness (DOC) posted in the CIC. The individual dual systems have no access to data held by other dual systems. Only the competent waste disposal authorities can access all of the submitted DOC data mentioned above for their supervisory tasks.

11. Further information

The procedure for submitting Declarations of Completeness is described in detail in **Annex 2**. In addition, **Annex 3** contains additional information specifically for external auditors with respect to use of the qualified electronic signature which is required by law.

The contact persons at the German CICs, as well as further information, can be viewed on the website <http://www.ihk-ve-register.de>.

Foreign companies may contact the respective German chamber of commerce abroad, which can be found at <http://www.ahk.de>.

(Status: 1/2015)

Annex 1: Overview of officially recognized dual disposal systems for sales packaging pursuant to § 6 of the Packaging Ordinance, in alphabetical order

BellandVision GmbH

Phone: 09241 4832-0, E-Mail: info@bellandvision.de, Website: www.bellandvision.de

Der Grüne Punkt – Duales System Deutschland GmbH

Phone: 02203 937-0, E-Mail: info@gruener-punkt.de, Website: www.gruener-punkt.de

ELS Europäische Lizenzierungssysteme GmbH

Phone: 0228 94377-3, E-Mail: service@els-systeme.de, Website: www.els-systeme.de

INTERSEROH Dienstleistungs GmbH

Phone: 02203 9147-0, E-Mail: info@interseroh.com, Website: www.interseroh.de

Landbell AG für Rückhol-Systeme

Phone: 06131 235652-0, E-Mail: info@landbell.de, Website: www.landbell.de

Reclay VfW GmbH (originally two separate dual systems: "Redual" and "VfW")

Phone: 0221 580098-0, E-Mail: group@reclay-group.com, Website: www.reclay-group.com

RKD Recycling Kontor Dual GmbH & Co. KG

Phone: 0221 474465-0, E-Mail: info@recycling-kontor.koeln , Website: www.rkd-online.de

Veolia Umweltservice Dual GmbH

Phone: 040-78101-0, E-Mail: info-dual@veolia-umweltservice.de,
Website: www.veolia-umweltservice.de/dual

Zentek GmbH & Co. KG

Phone: 02203 8987-0, E-Mail: info@zentek.de, Website: www.zentek.de

Annex 2: Instructions for submission of the Declaration of Completeness (DOC)

1. Ascertaining DOC data for the reporting year

You are required to specify the quantity of the sales packaging marketed by you in the past calendar year.

If at least one of the de minimis limits (quantity thresholds) mentioned in Section 10 above is exceeded, a full Declaration of Completeness must be submitted. You are required to document not only the packaging in excess of the individual de minimis limits, but rather all sales packaging in the reporting year.

These quantities must be broken down by the type of material (glass, paper/cardboard/carton, tinplate, aluminum, composites, plastics, other materials). They must also be distinguished based on the target group (b2c: private end consumers; b2b: commercial end consumers) and, for b2c sales packaging, by the type of participation (dual systems or industry solutions).

The information you specify must be plausible and verifiable. Records and documentation must be prepared for the external auditor.

2. Coordination of data with the auditor

Please note that the auditor, in the audit report, must confirm (certify) the accuracy of your information for the relevant reporting year without objections.

This audit report must be available to you at the time you submit the DOC, so that the date of the audit report can be specified in the DOC. Accordingly, you need to contact the auditor before entering your quantity data into the DOC Register. Only data which has been coordinated with the auditor should be entered into the DOC Register.

3. Initial registration in the DOC Register (registering the companies)

Pay particular attention to your Value-Added Tax ID Number (VAT ID). It is important that you use the same VAT ID in the DOC Register and in your agreements with the dual systems! The VAT ID cannot be changed after initial registration is completed!

Enter the company name as it is entered in the Commercial Register.

A responsible person has to be specified upon registration, since this is required under the Ordinance and because messages from the DOC Register will be sent to that person's e-mail address.

Registration only has to be completed once. With the exception of the VAT ID, the company information can be changed later on via the "Basic information" screen in the company module.

4. Logging into the system

After successful registration, you can log in using the access data sent to you by e-mail and you can assign a password for your access account (log-in).

5. Entry of DOC information

Quantities are to be specified in kilograms (not in tons/megagrams).

When entering data for specific materials, please make sure that the quantities are correctly allocated to the various materials, and to the various dual systems.

The quantity data for § 6(2) of the Packaging Ordinance (industry solutions) are to be reported as overall quantities for all industry solutions in which your company participated in the reporting period. Accordingly, a breakdown of quantities among multiple industry solutions is not required and is not provided for in the entry system.

Commercial sales packaging (b2b) pursuant to § 7 of the Packaging Ordinance must also be reported in the DOC. This data is not relevant for the initial question as to whether the de minimis limits for b2c sales packaging are exceeded. However, if the submission of a DOC is required based on the b2c packaging quantity, then (and only then) the quantity of b2b sales packaging must also be reported in the DOC.

The entry of DOC data is to be completed by clicking "Save." Only then will the data be added to the DOC Register.

6. Generating and downloading the audit certificate with information from the Declaration of Completeness (DOC pdf)

Only after the DOC data is saved can a DOC pdf file (audit certificate with information from the Declaration of Completeness) be generated from the database.

Once generated in this way, the DOC pdf file, which can no longer be modified, can now be downloaded for certification.

If information in the DOC has to be corrected later on, the entire process from entry of the data (Step 5) to downloading the DOC pdf file (Step 6) has to be repeated.

When you generate a new DOC pdf file, all previous versions become invalid and will no longer be accepted by the DOC Register, even if the DOC has already been successfully entered and published! The DOC which had been entered will be moved to the archive and the company will no longer be displayed in the public register for the time being.

Please save the DOC audit certificate (the DOC pdf file) directly to your computer first without opening it. Use standard Windows commands only when copying and moving the file later on, because if you were to save the DOC audit certificate using the "Save as" function, e.g. with "Acrobat Professional," this would modify the original file and as a result, the file would no longer be recognised as the original document when uploading the file to the system. This problem will not arise if you are using the "Adobe Acrobat Reader" software. Please notify to your auditor as well, that the original "Prüfbescheinigung" respectively PDF-file may not be altered under any circumstances.

7. Transmission of the DOC pdf file to the auditor

Make sure that the DOC pdf file is transmitted immediately and securely to your chosen auditor. You are free to choose the mode of transmission for the DOC pdf file, but it must be transmitted in file form.

8. Qualified electronic signature of the DOC pdf file by the auditor

Certification is issued when the auditor, after comparing the data against the audit documents, affixes his or her electronic signature to the DOC pdf file (cf. the additional notes on the following pages). The auditor can only accept and sign the entire DOC pdf file: the auditor cannot accept the file only in part or make changes.

The DOC Register only accepts the PKCS#7: standard for signature of the Declaration of Completeness. This standard is met by all signatures accredited by the German Federal Network Agency. Whether foreign signatures are suitable for DOC certification should be clarified with the CIC or the chamber of commerce abroad in case of doubt!

The digitally signed DOC pdf file or signature file must now be sent back to the company electronically, e.g. on a data storage device.

9. Posting the signed DOC pdf file in the DOC Register and to the competent CIC

Once you receive the signed DOC pdf file or signature file, you have to log back into the DOC register in order to upload the signed DOC pdf file or signature file into the system.

The DOC register will only accept the DOC pdf file or signature file if the pdf document is unchanged and if the qualified electronic signature is valid.

Once the file is uploaded, the Declaration of Completeness is considered to be legally submitted. Receipt of the signed DOC in the DOC register is documented with a time stamp, which can be viewed by the competent supervisory authority.

The DOC you submit will automatically be presented to your respective Chamber of Industry and Commerce (CIC). Once the DOC is approved by the CIC, your company will be entered into the list of companies which can be viewed online, in its new form, starting on 2 May. Only the name of the company, the postal code and the city will be published: no other information will be made public.

Annex 3: Additional notes for auditors

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

The required signature equipment is comprised of three components:

1. An individual signature chip card or token from an accredited trust center in conformance with the Signature Act. The card/token is not transferable and must be requested in person or using the post-ident procedure. Providers include: D-TRUST, S-TRUST and Telesec.
2. A chip card reader with its own keyboard and a PC-SC or CT-API interface if you are using a signature chip card. Suitable products include: Reiner SCT cyberJack Pinpad, Reiner SCT cyberJack e-com, SCM Chipdrive Pinpad, Kobil KAAAN advanced and Kobil KAAAN professional.
3. Software for the qualified signature of files meeting the PKCS#7 standard. Suitable products include: SecCommerce SecSigner 2.0.0, OPENLiMiT CC Sign Basic Component 2.1. and digiSeal Office Pro 2.5.0

Please note that the Packaging Ordinance requires a **qualified** electronic signature. Declarations of Completeness with a simple or advanced electronic signature will be rejected by the system. Because the designations are similar, it is easy to get confused!

Please plan some lead time: It can take up to 2-4 weeks for delivery of your signature card.

How do you sign the DOC audit certificate?

It is necessary for a signature software to be installed which enables the signing of pdf documents in the PKCS#7 format. A number of standard solutions meeting this requirement are freely available on the market. A list of all permissible signature application components can be viewed on the website of the Federal Network Agency [here](#).

However, not all of the solutions listed there support the PKCS#7 standard. In case of doubt, the manufacturer's product description should provide information as to its compatibility with technical standards. Notes on use of the software, particularly for the signing of documents in the PKCS#7 format, can be found in the manual which is delivered together with the software. In addition, every manufacturer offers technical support.

The endings of signature files in the PKCS#7 format may vary depending on the software used. Typical endings include: ".p7m, .p7s, .p7k and .pkcs7." After the pdf audit certificate is successfully signed, it must be electronically transmitted to the company submitting the DOC and can then be uploaded by the company to complete the posting in the DOC register.

How to avoid errors:

The most important rule when using the qualified electronic signature is that the file itself may not be altered.

Don't make any changes and don't attach files!

The DOC register will only accept an unmodified pdf document with a valid qualified electronic signature in the PKCS#7 format.

Don't sign the audit certificate more than once!

Pursuant to § 10(1) of the Packaging Ordinance, the DOC audit certificate is to be signed electronically by just one auditor. The written audit report on the basis of which the DOC data is entered may be signed by multiple persons, but the audit report is not part of the Declaration of Completeness.

Don't encrypt your signature!

The signature program may have an option to encrypt your signature. If you do so, the DOC register will be unable to read the signed file, since the relevant encryption code is missing. Accordingly, the encryption option in the signature software must be deactivated.

Don't use the "Document"/"Sign" function in Acrobat when signing!

There are other ways of signing documents electronically aside from the PKCS#7 standard format. For example, signature element can be placed directly into the pdf document using the Adobe Acrobat signature function. The CIC DOC register will be unable to read these files, and those files will therefore be rejected with a message to that effect.

Other technical information

Even if these suggestions are followed, error messages may come up in individual cases when uploading the signature file into the DOC register. Notes with respect to such application-specific and technical questions can be found at:

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

If you are still experiencing problems, the CIC contact persons are at your disposal.