

Court confirms high fine for outstanding declaration of completeness. Failure to file a declaration of completeness in the LUCID Packaging Register prevents auditing and is more than a technical breach.

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What is the reason for this case report?

Companies that place high packaging volumes on the German market together with their goods must submit a declaration of completeness to the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR). These declarations of completeness must have been checked by an auditor and be filed by no later than 15 May of any given year for the previous year. Every calendar year, a large number of the declarations that must be filed by law remain outstanding. That means that the companies involved are failing to meet their extended producer responsibility in whole or in part and are not observing legal requirements. They also prevent the ZSVR from auditing the declaration of completeness. This audit is required pursuant to section 26 (1) no. 4 VerpackG (Packaging Act).

Producers must instruct an independent auditor to confirm their declaration of completeness. Basing their assessment on the ZSVR's audit guidelines, these independent auditors attest that the statutory obligations have been met. In their audit opinion, these auditors specifically confirm that the audited company has fully participated all packaging for which it is required to do so with a system. Sometimes auditors discover cases where system participation has not been undertaken. The relevant company then has to cure the omission.

Many hundreds of companies under obligation (defined as 'producers' under the law), located in Germany and abroad, do not fulfil this statutory obligation or fail to do so on time, despite the fact that the obligation has existed for quite some time. Only producers below the thresholds set out in section 11 (4) VerpackG are exempt from the requirement to submit a declaration of completeness.

What happened?



For four consecutive years, a large German food company failed to meet its obligation to file a declaration of completeness. The ZSVR reported its suspicion that multiple administrative offences had been committed to the responsible enforcement authorities, who then initiated administrative offence proceedings. At the same time, the company was instructed to file the missing declarations of completeness.

What are grounds to suspect that packaging law has been violated by failing to file a declaration of completeness?

The obligation to submit a declaration of completeness for the previous year is triggered for companies when the volume of the packaging subject to system participation they placed on the German market in the previous calendar year meets or exceeds at least one of the following three thresholds:

- Glass: 80,000 kg
- Paper, paperboard, cardboard (PPC) in total: 50,000 kg
- Ferrous metals + aluminium + plastics + beverage cartons + other composites (lightweight packaging) in total: 30,000 kg

There are around 6,300 large companies located in Germany or internationally that have very significant packaging volumes and are required to file a declaration of completeness. When a company has met or exceeded one of the above thresholds but has not filed a declaration of completeness in the LUCID Packaging Register by the statutory filing date (generally 15 May for the previous year), this constitutes a specific ground to suspect an administrative offence. The relevant data set underlying suspected cases includes in particular the annual packaging volumes reported in the LUCID Packaging Register by the producer and by one or more system(s) referencing this producer.

What was the result of these court proceedings?

The competent authority issued a fine of 35,750 euros against the food company. The latter's appeal was of limited success as the competent district court upheld the fine. But the court viewed the company's prompt filing of the outstanding declarations of completeness with the ZSVR as a mitigating factor and reduced the fine by 2,000 euros. The ruling is legally binding.

What are the consequences of administrative offences if they can be proven?

If there are specific grounds to suspect an administrative offence, the ZSVR will report it to the responsible state enforcement authorities. Possible repercussions for breaching the obligation to file a declaration of completeness includes the imposition of fines, including monitoring whether the filing was completed eventually. Failing to file a declaration of completeness on time or at all is punishable with a fine of up to 100,000 euros per incident. Producers that place larger packaging volumes on the German market are urged to independently comply with the statutory obligation to file a declaration of completeness.

Read more

For further information about the system participation requirement and other obligations [↗](#) under the Verpackungsgesetz (Packaging Act). Information on the declaration of completeness [↗](#) in particular can be found at.