

PRESS RELEASE

ZSVR is a federal authority under the Rules of the Administrative Courts – question of legal venue clarified

Decision of the German Federal Administrative Court dated 9 January 2023

Case no. BVerwG 10 AV 1.23

Osnabrück, 30 January 2023

The question of legal venue for actions challenging administrative acts issued by the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR), which is headquartered in Osnabrück, has been clarified by a decision of the Bundesverwaltungsgericht (Federal Administrative Court) delivered on 27 January 2023. Neither the Osnabrück Verwaltungsgericht (Administrative Court), where the defendant was located, nor the Stuttgart Verwaltungsgericht (Administrative Court), where the claimant was located, were willing to permit a legal action to challenge a classification decision made by the ZSVR. The case was transferred by the Osnabrück Administrative Court to the Stuttgart Administrative Court, which held that the transfer was void and, in May 2022, referred the question of legal venue to the Federal Administrative Court. In its decision, the Federal Administrative Court stated the principal grounds were:

'This extensive integration into the federal administration and its nationwide role justify putting the defendant on equal footing with federal authorities and other federally incorporated bodies[...]. [...] Concentrating disputes against the ZSVR's decisions at the Administrative Court in whose district the ZSVR has its seat is also [...] appropriate and in particular furthers the interests of specialisation pursued in section 52 no. 2 VwGO.'

This recognises that, regardless of its legal form as a private charitable foundation, the ZSVR as an authority is entrusted with the federal powers set out in the Verpackungsgesetz (Packaging Act). The decision is an important signal in terms of the uniform application of the Verpackungsgesetz and the consistency of case law in packaging law decisions. Court decisions on packaging law proceedings involving the ZSVR will therefore have a uniform effect throughout Germany, both at the court of first instance (Osnabrück Administrative Court) and before the appellate court (Lüneburg Higher Administrative Court), and not only when they are challenged by an appeal on points of law to the German Federal Administrative Court. That is why this decision was of great importance to the court of first instance in Osnabrück, where the ZSVR as the defendant is headquartered.

The starting point of the proceedings to determine whether the Osnabrück Administrative Court is the correct legal venue were classification decisions that the ZSVR made about the system participation and deposit requirements for packaging. In four different cases, the Osnabrück Administrative Court had rejected its jurisdiction and transferred the proceedings to the courts at the claimants' headquarters. Since then, a legally binding ruling has been made in one of these four cases.

Based on the recent decision, the Administrative Courts where the claimants' headquarters are located will decide the three proceedings in which a ruling has yet to be made. All currently pending or future proceedings at the Osnabrück Administrative Court fall within the jurisdiction of the Osnabrück Administrative Court.

Gunda Rachut, Chair of the ZSVR, welcomed the decision: *'The decision is of fundamental significance for the ZSVR's work. Companies that have to meet their packaging law obligations need reliable and consistent case law on which they can base their business decisions. That makes for an even playing field and is an important objective of the VerpackG.'*

About the ZSVR

The Stiftung Zentrale Stelle Verpackungsregister (Foundation Central Agency Packaging Register – ZSVR) is headquartered in Osnabrück. The founders are the Bundesvereinigung der Deutschen Ernährungsindustrie (Federation of German Food and Drink Industries – BVE), the Handelsverband Deutschland (German Retail Association – HDE), the IK Industrievereinigung Kunststoffverpackungen (German Plastics Association – IK), and the Markenverband (German Trade Mark Association). Since the Verpackungsgesetz (Packaging Act) entered into force on 1 January 2019, the ZSVR has served as an entrusted body to foster greater transparency and control in packaging recycling. To this end, it maintains a register of all industrial and commercial parties with producer responsibility and checks the dual systems and packaging recycling so as to promote fair competition among the parties involved. Lawyer Gunda Rachut is the Chair of the Foundation.

Contact:

Dr Bettina Sunderdiek
Head of Communications and Press
Phone: +49 541 201971-13
Mobile: +49 160 84 33576
presse@verpackungsregister.org
www.verpackungsregister.org
About the ZSVR
Öwer de Hase 18
49074 Osnabrück
Germany