

Public Law  
Germany

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## Germany intends to introduce a duty of care for products

### What has happened?

The German Federal Government has agreed on a draft bill amending the Circular Economy Act (Kreislaufwirtschaftsgesetz, "KrWG"). In addition to transposing waste legislation adopted under the European Union's Circular Economy Package into national law, Germany also intends to use this opportunity to introduce, among other things, a so-called "duty of care" (Obhutspflicht) which will require distributors in case of distance sales to ensure that the goods remain usable if returned by the customer and do not become waste.

### What it means for you

The KrWG already provides for "product responsibility" (Produktverantwortung). This principle requires economic operators to design products in a way that reduces waste and to ensure that products can be recycled or disposed of in an environmentally sound way after their use.

Said draft bill extends the principle of product responsibility by introducing a duty of care that applies to customer returns of shipped products, and will mainly affect e-commerce and mail order companies. By introducing this new duty, the government bans the alleged practice of online retailers to destroy returned products for cost reasons. Such practice is presumed to generate a considerable amount of waste and has caused criticism in the German public.

In order for the new duty of care to become applicable, the bill will have to be approved by the legislature and an ordinance providing practical details will have to be adopted. The deadline for transposing the EU's Circular Economy Package expires on 5 July 2020.

In addition to the duty of care affecting online sales, the German Federal Environment Ministry is drafting a "Transparency Ordinance" which will force retailers to disclose their policy on how they treat returned products (e.g. what portion of such products is re-sold, donated or destroyed).

### Actions to take

Even though the bill has not been adopted and the concrete obligations under a future duty of care remain to be seen, it seems advisable for companies shipping products to customers, such as online distributors, to review their current practice of dealing with returned products. If such policy involves the destruction of returned products, they may want to review whether such practice will comply with the duty of care and prepare for potentially required revisions of such practice.

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