



Register

EPR in Germany, Competition and Supervision – What's new since 2019?

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Dr Bettina Sunderdiek, Head of Communications & Press



1. EPR in Germany – a look in the rearview mirror

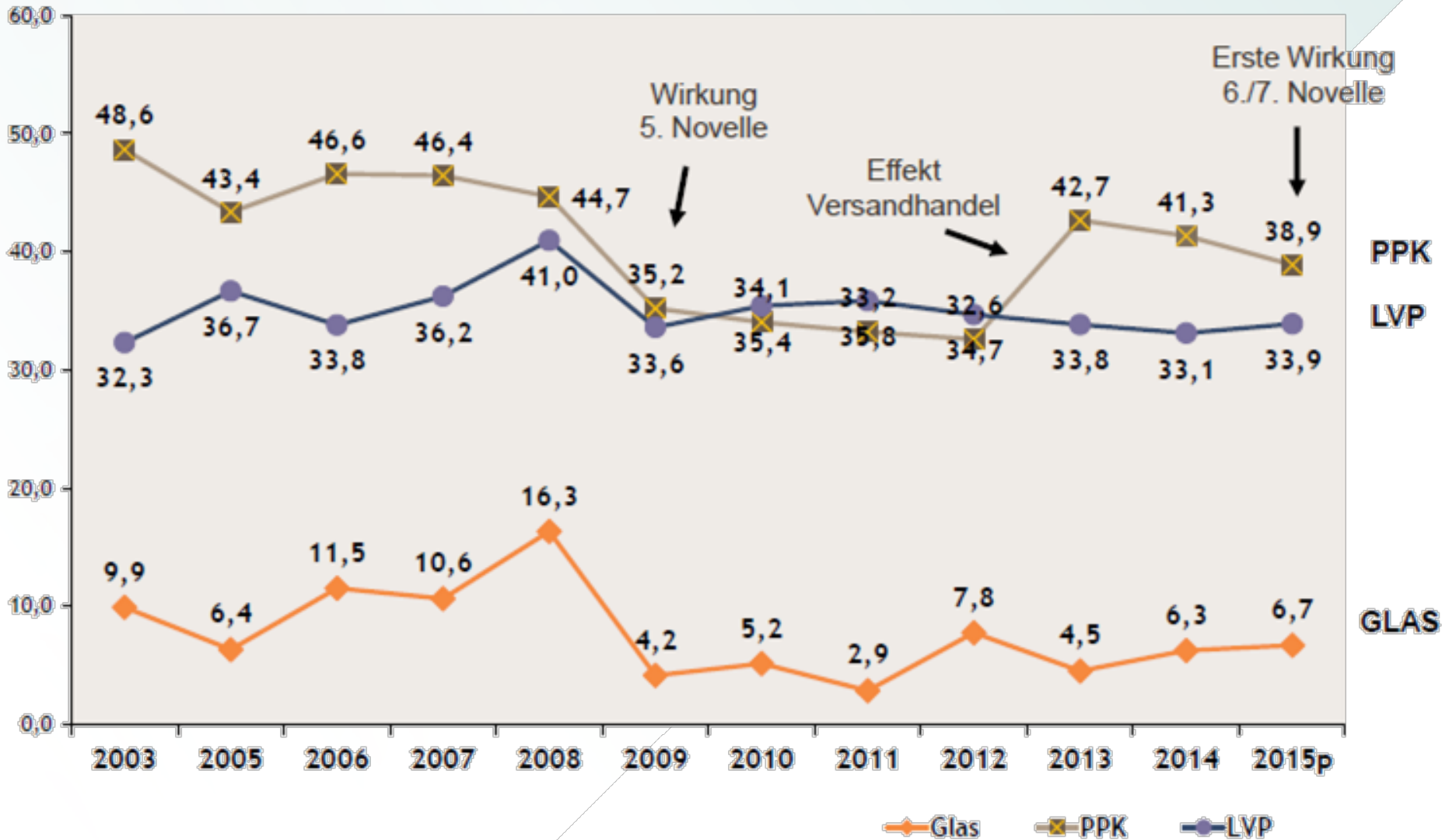
EPR in Germany

Starting point and a look in the rearview mirror

- ▶ The principle of extended producer responsibility has been applied since 1993.
- ▶ That means: the system participation requirement is nothing new!
- ▶ During the 1990s EPR was organised as a monopoly, carried out by Duales System Deutschland (“DSD - Der grüne Punkt”)
- ▶ In 2001 the market was opened for competition.
- ▶ Since then prices for recovery of packaging have declined massively. Thanks to loopholes in the former packaging regulation, even below actual costs.
- ▶ The fundamental problem was ‘free-riding’. Many producers disregarded their obligations over the last 25 years. The market did not work sufficiently. Companies did not pay, or paid very little, but PROs still had to recover packaging. Ultimately it lacked the financial power to ensure packaging waste was recovered and recycled.
- ▶ This led to losses in excess of EUR 200 million annually and brought the whole EPR-scheme in Germany to the brink of bankruptcy more than once, most recently in 2014. The Verpackungsgesetz (Packaging Act) was created to solve this problem.

Degree of participation – the shortfall in assumed producer responsibility over time

Development of the degree of non-participation



The degree of participation of lightweight packaging has never exceeded the 2/3 mark.

Conclusions in preparation for the Packaging Act

- ▶ The conclusion that industry and politics drew was: there is no competition without supervision!
- ▶ On 1 January 2019, the Verpackungsgesetz (Packaging Act – VerpackG) entered into force.
- ▶ The new Act replaced the Verpackungsverordnung (Packaging Regulation – VerpackV), that was in force up until 31 December 2018.
- ▶ Based on the Act, the Foundation ‘Zentrale Stelle Verpackungsregister (Central Agency Packaging Register)’ was established.
- ▶ The goals of the Zentrale Stelle Verpackungsregister, or ‘ZSVR’, are:
 - ◆ To implement the Act
 - ◆ To establish fairness and transparency for the waste management market
 - ◆ To create a high-quality level of recycling
 - ◆ Producers should prevent packaging, reuse it or bear the costs of recovery

The Packaging Act and its rules lay the groundwork for taking action against breaches of the law; for example, for not registering or for not reporting packaging volumes. After all, only a financially sound market can be effective.



2. Existing and new obligations

Existing and new obligations for producers

Concerning the Packaging Act since January 2019

Existing obligations for producers:

- ▶ Every entrepreneur or company
 - ◆ that is the first to – commercially – fill empty packaging with goods and place this packaging onto the German market
 - ◆ is required to participate this packaging in a (dual) system, e.g. PRO, if the packaging ends up as waste with a final consumer.

New obligation for producers:

- ▶ The company is also required to
 - ◆ register with the LUCID Packaging Register with their master data and the brand names of the goods they place on the German market
 - ◆ submit data reports regarding the yearly packaging volume they place on the German market
 - ◆ The PROs also report the packaging volumes that the companies participated with these PROs
 - ◆ In this way the Central Agency can monitor if producers meet their obligations and realise their producer responsibility. This is a first step. In further improvements, reported packaging volumes will also be checked.
 - ◆ Is there something to watch out for? Yes, please note that fulfilment of the registration and reporting requirement cannot be delegated to third parties.

Further new rules and obligations

Concerning the Packaging Act since January 2019

New obligations for auditors:

- ▶ The Packaging Act also imposes much stricter requirements on auditors who attest reports on packaging volumes for large companies, so-called 'declarations of completeness'. They too must register in the register of auditors, which is a division of the Packaging Register.

Visibility of the LUCID packaging register:

- ▶ The register itself is public and creates visibility about who fulfils their producer responsibility. You, me, competitors – anyone can go to the online register to see who has registered and is fulfilling their producer responsibility.

Implementation of a minimum standard

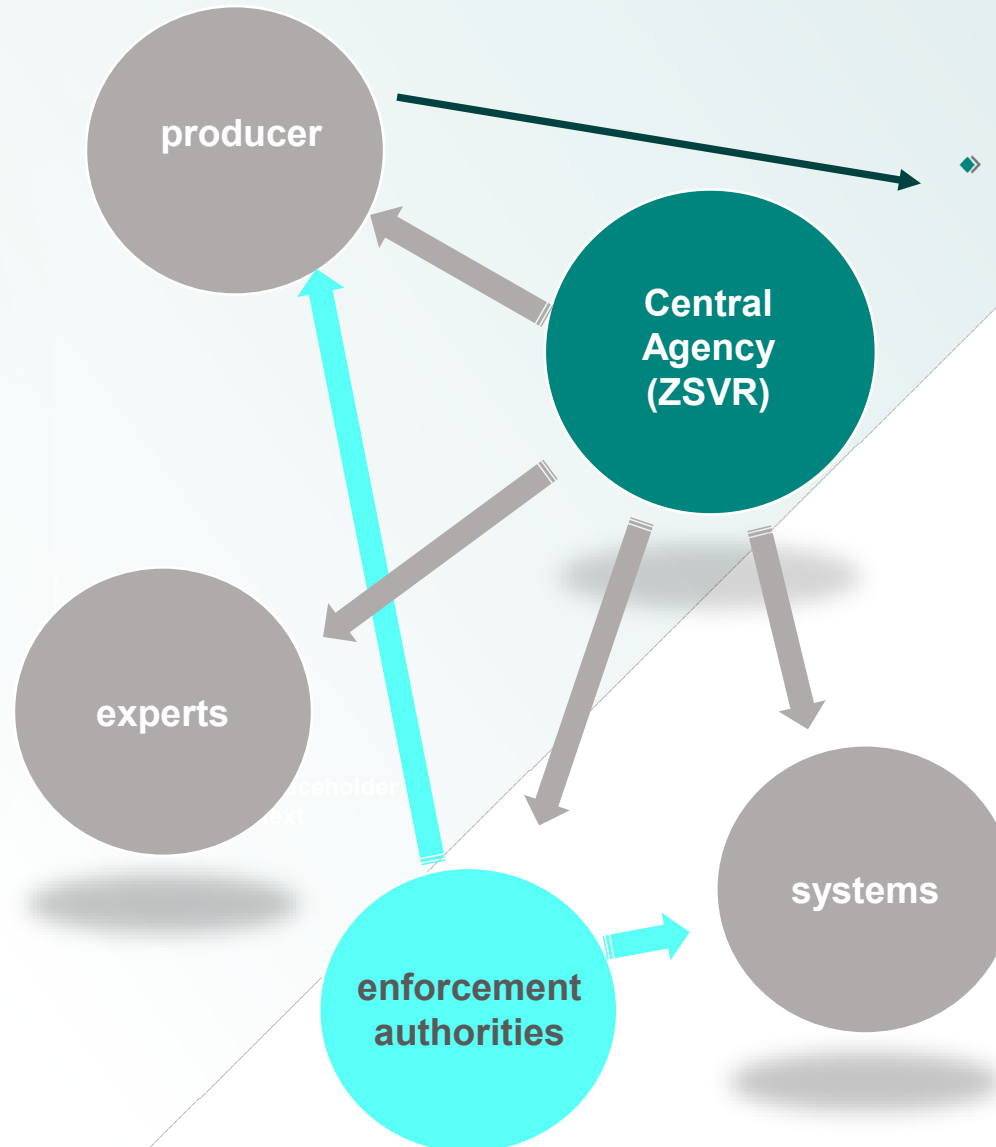
- ▶ Another important goal of the Act is to minimise the impact packaging has on the environment. To this end, the Packaging Register publishes a minimum standard for determining the recyclability of packaging every year.
- ▶ This minimum standard helps to determine how much of the packaging can actually be recycled, i.e. the proportion of recyclable material. The Packaging Act also aims to increase recycling quotas and the share of recyclates used in packaging. And it promotes new recycling techniques.



3. Rules and mechanisms to control the market

How the Central Agency (ZSVR) controls the market

- ◆ We give clear guidance (by means of a catalogue) as to which packaging is subject to system participation
= no more uncertainty / no more intentional misinterpretation
- ◆ Producers must report data on their packaging
- ◆ We can oblige producers to make a declaration of completeness
- ◆ Large producers and those obliged to make a declaration have to be audited
= no more sub-participation
- ◆ We release audit guidelines / we register auditors
= no more auditing of incorrect data reports



- ◆ Received data regarding the yearly packaging volume: ZSVR double-checks data and detects deviations/ we calculate market shares
= no more miscalculation to depress market share

- ◆ Systems must report data on packaging for each producer under contract

We provide information on legal violations to the enforcement authorities so they can impose fines and distribution bans

Central Agency Packaging Register (ZSVR)

Structured to prevent free-riding

Transparency

Producer / initial distributor

- ✓ Master data
- ✓ Brands
- ✓ Data reporting

Dual systems

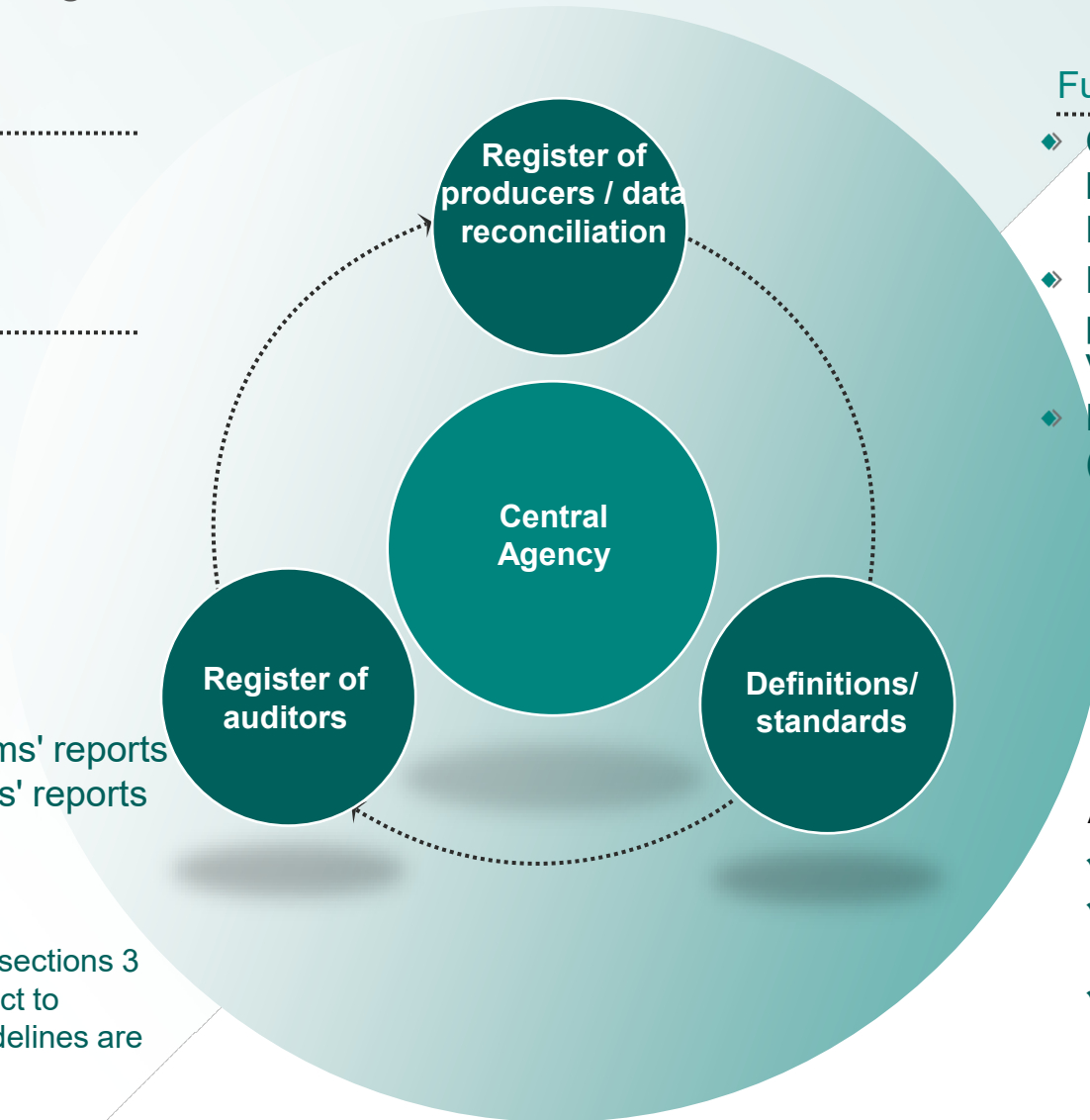
- ✓ Quarterly reporting
- ✓ Year-end settlement

Register and monitoring

System participation / recycling rates

- ✓ Auditing the dual systems' reports
- ✓ Auditing large producers' reports
- ✓ Auditing recycling rates
- ✓ Training of auditors

Registered experts pursuant to sections 3 (15), 27 (1) VerpackG are subject to exclusion from the list if the guidelines are breached.



Further tasks

- ◆ Clearing - Market share calculation as basis for the clearing between the PROs
- ◆ Determining the minimum standard for packaging recyclability (section 21 VerpackG)
- ◆ Examine volume flow records (important for recycling quotas)

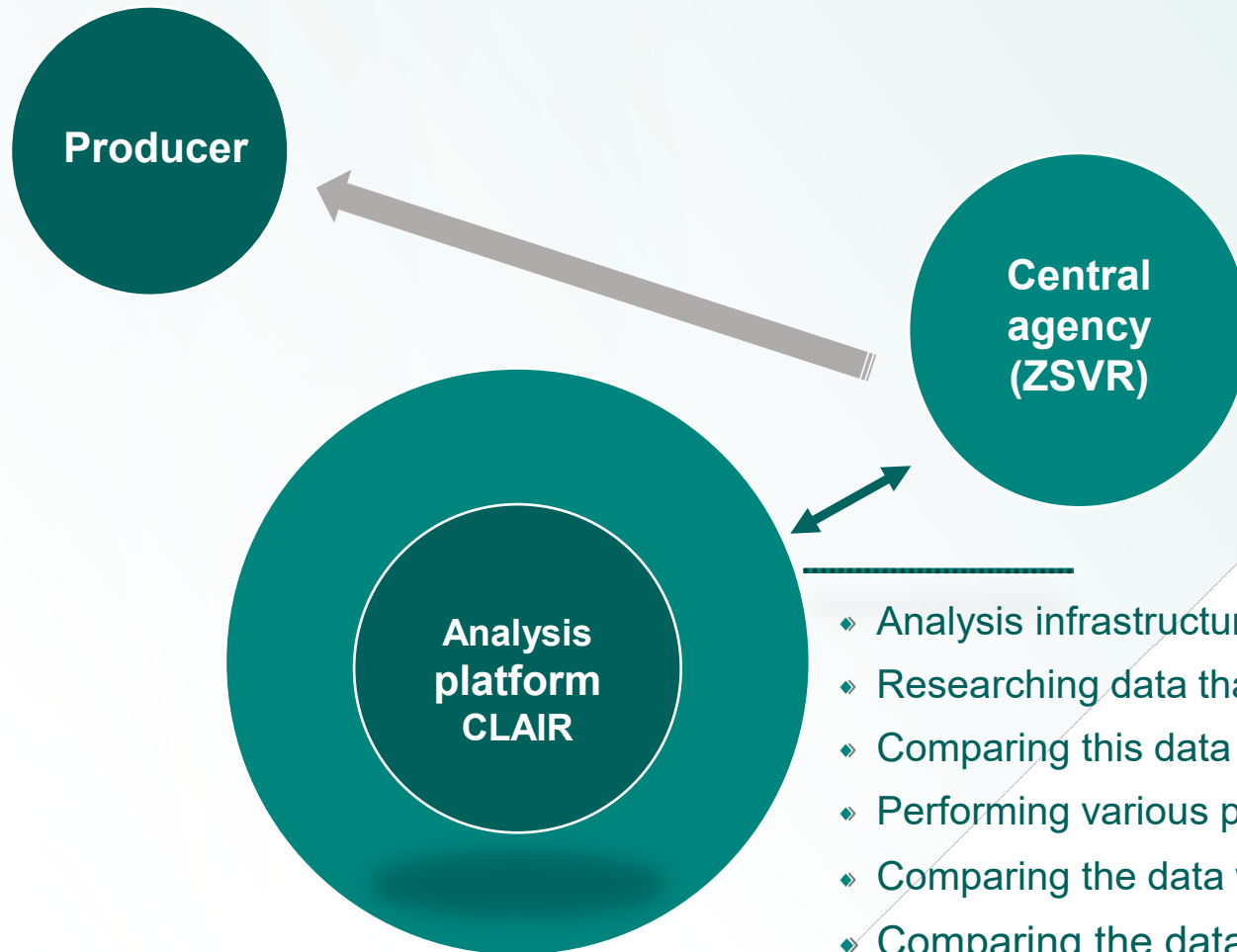
Law, standards, audit guidelines

All participants

- ✓ Clear definitions in the Packaging Act
- ✓ System participation requirement catalogue
- ✓ Audit guidelines for system auditors, annual report auditors, system recycling targets

Central Agency Packaging Register (ZSVR)

Analysis platform CLAIR



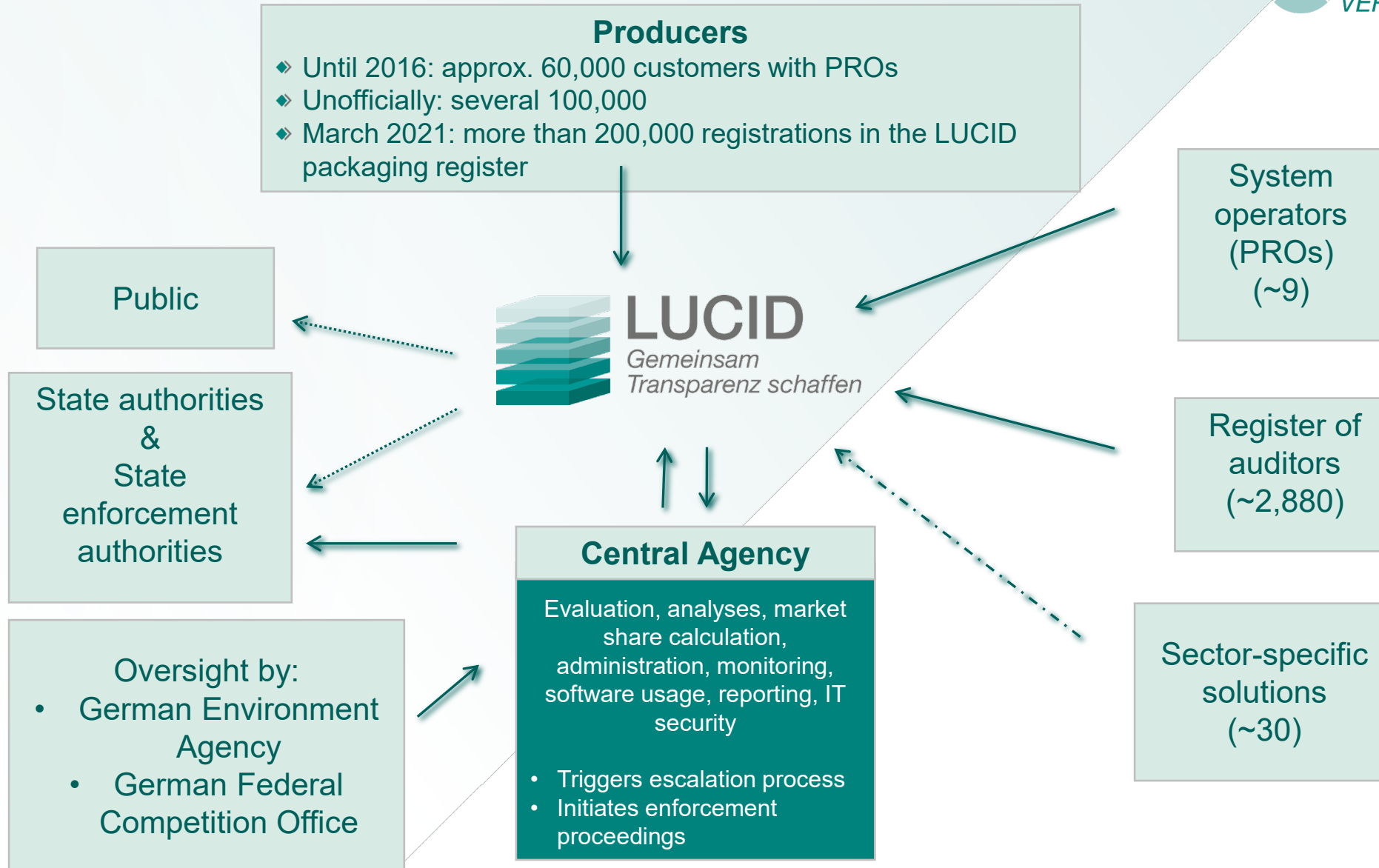
- ◆ New analysis platform CLAIR under construction
- ◆ Goal is to identify producers who haven't registered at all, or who have contracted with dual systems on the basis of insufficient volume

- ◆ Analysis infrastructure including Hadoop cluster, data warehouse solution and BI tool
- ◆ Researching data that is publicly available
- ◆ Comparing this data with ZSVR's own database
- ◆ Performing various plausibility checks
- ◆ Comparing the data with purchased market research data
- ◆ Comparing the data provided by producers with the complementary reports of PROs
- ◆ This results in swift exposure of any deviations



5. Structure and organisation

The LUCID Packaging Register



Central Agency Packaging Register (ZSVR)

Extensive legal supervisory bodies

- ▶ **Foundation authorities**

General oversight of the budget and the implementation of the foundation's purpose

- ▶ **German Environment Agency**

Legal and technical supervision in public law matters

- ▶ **German Federal Audit Office**

Oversight of the budget and/or spending, and the economical use of funds

- ▶ **German Federal Competition Office**

Assessing the Foundation's activities with regard to its impact on competition

- ▶ **Enforcement authorities**

Requirements on the form and content of reports, agreement on interpretation decisions, where applicable

- ▶ **Courts**

Review of decisions of the ZSVR, where applicable

The ZSVR predominantly acts in public law. As such, internal activities are also subject to administrative law regulations. This framework demonstrates that the ZSVR must act as authorised, subject fully to regulations and oversight.



6. Figures at a glance, and further conditions to raise awareness of the new topics

Some key figures at a glance

March 2021

► **Number of registrations**

- Prior to 2016, only 60,000 producers under contract with systems
- 1 January 2019: entry into force of the Packaging Act; 100,000 registrations
- March 2021: around two years later – number of companies that meet their producer responsibilities has more than tripled; there are more than 200,000 registrations
- Estimate: total number of obligated companies now several 100,000; about 300,000 online retailers

► **Other important key figures**

- ✓ about 9,700 declarations of completeness in total for the years 2018 and 2019
- ✓ nearly 100,000 inquiries from companies under obligation or auditors (most common questions concern registration and data reporting)