

# A long time coming, ... .

## The amendment of the Pkw-EnVKV 2024

As announced by the Federal Ministry for Economic Affairs and Climate Protection (BMWK) on 23 February 2024, the new Passenger Car Energy Consumption Labelling Ordinance ("**Pkw-EnVKV**") was promulgated on 22 February 2024 and came into force just one day later on 23 February. The abrupt introduction of the new Pkw-EnVKV came as a surprise – especially in light of the fact that the amendment has been "tinkered with" since 2018. However, the very short transitional periods for the continued use of advertising material and the immediate applicability to new advertising are particularly critical:

- Accordingly, **advertising on the Internet** may continue to be used **until 1 May 2024** in accordance with the previous requirements of the Pkw-EnVKV.
- For **traditional print** advertising, the period of continued use is until **1 August 2024**.
- **Labels and notices** in retailers' **showroom** must also be brought into line with the new requirements **by 1 May 2024**.

It is disputed whether **new advertising**, i.e. advertising that is used for the first time after 22 February 2024, must already comply with the requirements of the new Pkw-EnVKV or whether the above implementation deadlines also apply here. The Federal Ministry for Economic Affairs and Climate Protection has commented on this in a [statement](#) (German): according to this, the transitional periods should only apply to advertising that is already "live". New advertising must comply with the requirements of the Pkw-EnVKV in the version dated 22 February 2024. There are **no transitional** periods for new vehicles. However, the previous notice and poster can continue to be used until 1 May.

In terms of content, the legislator has used the long-overdue amendment of the Pkw-EnVKV to comprehensively revise the mandatory labelling so that, as a rule, all labels, notices and advertisements must be revised.

The good news: the NEDC values are now finally a thing of the past. In future, manufacturers and dealers may and must only use the WLTP values in their showrooms and advertising. The content of the mandatory information has been expanded. Manufacturers or dealers

who display a new passenger car, offer it for sale, long-term hire or leasing, or advertise it, must provide the following information:

1. fuel consumption,
2. CO<sub>2</sub> emissions,
3. energy costs for an annual mileage of 15,000 kilometres,
4. amount of motor vehicle tax,
5. possible CO<sub>2</sub> costs over the next ten years at an annual mileage of 15,000 kilometres and
6. CO<sub>2</sub> class.

For purely electrically powered vehicles and for externally rechargeable hybrid electric vehicles, the power consumption and electric range of the new passenger car must also be stated.

What needs to be considered in individual cases:

### Information obligations for print and online advertising

The PkwEnVKV initially clarifies various points that have been the subject of legal disputes in the past:

So, "new passenger cars" will be defined. According to this, a passenger car is "**new**" if (1) it is type-approved and (2) at the time it is offered, displayed or advertised by the manufacturer or dealer, (a) it has either not been registered for use on public roads for more than **eight months** or (b) it has a mileage of **less than 1,000 kilometres**. Please note: case law assumed ten months. This period has now been reduced to eight months.

If no binding WLTP values are yet available for a new passenger car, the question arises as to whether or how this vehicle can already be advertised. In future, no information will have to be provided in such a situation. However, manufacturers and dealers have the option of voluntarily labelling with provisional WLTP values. In this case, however, it must be made clear that these are provisional values.

Used vehicles are still exempt from the mandatory information. However, voluntary information can also be provided here. If the official car label is used, a clear

marking with the word "used car" must also be inserted in the heading.

The mandatory information for advertising is changing. Instead of fuel consumption and CO<sub>2</sub> emissions, in future

- the combined value for energy consumption or, in the case of externally chargeable hybrid electric vehicles, the weighted combined value for energy consumption,
- the combined value for CO<sub>2</sub> emissions, or in the case of externally chargeable hybrid electric vehicles, the weighted combined value for CO<sub>2</sub> emissions, and
- CO<sub>2</sub> -classes (new)

have to be indicated.

For externally rechargeable hybrid electric vehicles, the combined value for "fuel consumption with discharged battery" must also be specified.

The value of the CO<sub>2</sub> emissions resulting from the certificate of conformity of this passenger car is decisive for the allocation to a CO<sub>2</sub> class. The weight may no longer be taken into account.

The distinction between urban, extra-urban and combined consumption has been removed. Compared to the draft bill, the electric range for electric vehicles does not have to be stated in advertising in accordance with Section 5 Pkw-EnVKV.

It is unclear whether the mandatory information for advertising is conclusively regulated in Section 5 Pkw-EnVKV and Annex 4, or whether the information mentioned in Section 1 (1) Pkw-EnVKV must also be provided, as it also refers to advertising. However, the systematic of the law speaks against this interpretation. So the specific regulations on advertising - as in the past - are to be regulated in Section 5 Pkw-EnVKV. It is also not apparent from the legislative materials that the legislator intended to deviate from this regulatory systematic, in particular to regulate the mandatory information for advertising outside of Section 5 Pkw-ENVKV.

The information must still be easy to read and no less prominent than the main part of the advertising message. The information must be easy to understand even on a cursory reading. So nothing has changed here.

The definition of **online advertising** is explicitly extended to advertising in social media and online video portals, although the regulation only reflects current case law.

Online advertising has been simplified to the extent that the (long) reference to the **DAT guidelines** has been omitted without replacement.

The reference to the consumption values, emissions and CO<sub>2</sub> classes must continue to be made at the time when information on the motorisation is provided for the first time.

### Special features of online sales platforms

Additional mandatory information continues to apply to online sales platforms. Manufacturers and dealers must also provide the detailed mandatory information of the official car label that must be displayed in a showroom on or at least in the immediate vicinity of the exhibited vehicle on an online sales platform. This is consistent, as the sales channel cannot make any difference to the scope of the information obligations. The car label provided by the legislator in Annex 1 to the Pkw-EnVKV can be used for this purpose. Alternatively, the information on the label can also be integrated into the sales platform. Only the vehicle identification number is omitted, as this is not yet known. The information must be clearly legible. It must be ensured that the customer becomes aware of the information at the latest at the moment when he has finalised the configuration of a specific vehicle.

It is currently unclear whether car configurators are still covered by the regulation. The wording of the law refers to "manufacturers or dealers [who] offer models of new passenger cars for sale, long-term hire or leasing on the internet for the purpose of distance selling". A mere car configurator is not yet an e-commerce transaction and does not necessarily precede it. The customer can often configure the vehicle and must first go to the local dealer with the configuration to conclude the purchase. In this case, though, there is no distance selling. However, until the issue has been clarified, the label or at least the information on the label could be provided as a precautionary measure.

It is now stipulated that it is no longer an offence if the visibility of the mandatory information is not or only partially given solely due to the technical presentation of the respective platform on which the advertisement is placed and without further action on the part of the manufacturer or retailer. The regulation is to be interpreted narrowly as an exception. The decisive factor is that the missing or limited visibility of the mandatory information is exclusively due to a technical presentation over which the manufacturer or retailer has no influence, for example because part of the text is cut off by the social media provider in the mobile version and only appears after the "Show more" button. However, it is not sufficient for this exception to apply that a platform does not provide a text field for the mandatory

information or that there is a character restriction and therefore no mandatory information is provided by the manufacturer or retailer in the first place.

### More transparency also required for vehicles on display

Anyone exhibiting new passenger cars (e.g. at a trade fair) or offering them for sale or lease (showroom) is - as before - obliged to provide information at **the point of sale**. Firstly, a **notice** in the form of a label specified by the legislator must be affixed to or at least in the immediate vicinity of the vehicle on display. The **content of the label** has **changed**. In addition to the new energy sources, the energy costs and the range of electric vehicles, the division of urban and extra-urban areas into inner-city, suburban, country road and motorway has also changed, which corresponds to the WLTP test phases "low/medium/high/maximum value".

There is a separate label for each type of engine.

In addition to the label, a clearly visible **notice** must be **displayed** at the point of sale containing the values - where relevant - of the energy consumption, CO<sub>2</sub> emissions, electric range, CO<sub>2</sub> classes of all models of new passenger cars displayed at the point of sale or offered for sale, long-term hire or lease at the point of sale or via this point of sale.

In principle, dealers are obliged to label newly delivered passenger cars immediately. There is an exception for new passenger cars that have only recently been delivered to the point of sale. However, it must be unmistakably clear to a third party that the passenger car has only just been delivered, e.g. because it is still covered with protective film.

New passenger cars that are recognisably only temporarily available at the point of sale for delivery to the buyer, hirer or lessee are also exempt from the labelling requirement. Recognisability is determined, for example, by the fact that the vehicle is already registered to the buyer or lessee and therefore has a number plate, that it is parked in a space reserved for vehicles awaiting collection or that the vehicle is covered. However, a (truthful) sign stating that the vehicle is ready for collection is also sufficient. The exception only applies for a temporary period, which should not exceed one working day.

Due to the short to non-existent transition periods, it is essential that the affected parties deal with the amended regulations in a timely manner.

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