



“Plastic tax” in Germany - the single-use plastic fund law

Germany has followed suit. After countries such as Spain and the UK have already introduced a plastic tax, the German legislator has also passed a „plastic tax“ with the Single-Use Plastic Fund Act of May 11, 2023, or abbr. EWKFondsG (Federal Law Gazette I 2023, No. 124, dated May 15, 2023). “The plastic tax” was introduced on January 1, 2024, according to which the tax must be paid for the first time in 2025. Although there is still around a year to go until the first levy notice is issued, it is advisable for affected companies to deal with the new levy on single-use plastic products (EWK products) now in order to complete the necessary preparations in good time. The first quarter for 2024 served to clarify the extent to which they are subject to the levy administered by the Federal Environment Agency (UBA) in order to create the conditions for fulfilling the future reporting obligations, if necessary. For this purpose, since January 1, 2024, entrepreneurs have had the option of carrying out self-checks and submitting chargeable classification applications to the UBA (see below under 2). Most recently, the option to register has been added in certain cases.

1. Background under EU law

With the „EU Green Deal“ of December 11, 2019, the European Commission developed a package of measures to make the economy and society climate-neutral and sustainable by 2050. In addition to the most prominent components, such as the reduction of greenhouse gas emissions and the decarbonization of the energy sector, the package, which covers all policy areas, also includes the promotion of the circular economy. The latter means, on the one hand, creating incentives for climate-neutral and circular pollution-free products and, on the other hand, providing significant compensation measures for environmentally harmful disposable products. Due to the conceptual proximity, it is important in this context to differentiate between the EWKFondsG, the so-called EU plastic tax and the so-called [PPWR](#): The so-called „EU plastic tax“ (EU Council Decision 2020/2053 of December 14, 2020) was introduced in the relationship between the EU and the Member States. The future levy of the EU plastic tax has come back into focus since the current federal government's plans to finance the budget from 2025 became known. With Directive 2019/904 of June 5, 2019 (abbr. EWKRL), the EU created the framework for the implementation of measures to reduce the impact of certain single-use plastic products on the environment in the sense of the so-called „Extended Producer Responsibility“ (EPR) by the member states. Germany is implementing this directive with the EWKFondsG. With the PPWR („Packaging and Packaging Waste Regulation“, Regulation of the EU Parliament and of the EU Council 2022/0396 (COD) of March 15, 2024), a significant modification of packaging and waste legislation (including the EWK Directive) has already been agreed on EU level for the future which only requires the approval of parliaments throughout the EU.

2. EWKFondsG - Objective, scope, reporting obligations, classification findings, levy rates, sanctions

The aim of the EWKFondsG is to prevent and minimize the impact of certain single-use plastic products (abbr. EWK products) on the environment and human health and to promote innovative and sustainable business models, products and materials (Section 1 EWKFondsG). In order to achieve this, the market behavior of the obligated parties is regulated. To this end, the special levy flows into a fund to be set up, from which the public waste management authorities (so-called entitled parties) will in future be reimbursed for costs incurred in connection with the disposal and reduction of certain EWK products (Sections 15 et seq. EWKFondsG). The reimbursement includes collection, cleaning, sensitization, data collection and transmission costs as well as administrative costs (incurred by the UBA).

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The scope of application of the EWKFondsG covers the first-time provision of certain EWK products on the German market. These are products that consist entirely or partially of plastic, i.e. artificially produced polymers (in accordance with Art. 3 No. 5 of the REACH Regulation). For the purpose of determining which polymers are contained in the respective packaging material, UBA provided the so-called "Annex Material List" in form on 19 December 2023. Annex 1 to the EWKFondsG lists the EWK product types concerned in detail. The focus here is on EWC products in the food sector, e.g. boxes with and without lids for food, film packaging with food or beverage containers up to three liters or beverage cups. Lightweight plastic carrier bags as well as certain wet wipes, balloons, filters for tobacco products and - from 2026 - fireworks complete the list.

The personal scope of application of application is defined by the term „Producer“. In addition to the actual wording, all market participants (natural persons, legal entities and partnerships with legal capacity) who make available or sell the EWK products concerned on the German market for the first time on a commercial basis, whether in return for payment or free of charge, are covered. This therefore, besides manufacturers, also includes fillers, sellers and importers, both market participants established and not established in Germany. „Producers“ in this sense must register with the UBA in the course of 2024, which is to be done via the DIVID IT platform. Self-checks and classification applications, and now also certain registrations, can already be submitted or made (see below). The platform should gradually become fully functional over the course of 2024. With regard to the registration date, a distinction is made according to when the respective „Producer“ commenced its activities. „Producers“ who were **already active before January 1, 2024** must register by December 31, 2024. For „Producers“ who commence their **activities after the DIVID platform is available for registrations**, the legal requirement to register in advance applies without restriction. Finally, for „Producers“, who have started **operations after January 1, 2024**, the aforementioned legal requirement to register in advance also applies in principle. However, non-registration will have no consequences as long as the DIVID platform is not yet available, and registration is therefore not possible. As the registration option on the DIVID platform has now been activated, this means that „Producers“ who commenced their EWK-FondsG-compliant activities before the last weekend in March 2024 are in breach of the legal requirement of prior registration but will not be sanctioned for this. If the activity commences in April 2024, the companies concerned must register in advance in order to avoid the risk of sanctions (see below). It should also be noted that any registration made after the start of operations does not mean that the obligation to pay the levy also only applies from the date of registration. Subsequently registered „Producers“ must also submit declarations for the entire year 2024 or the entire period of their EWKFondsG-related activity and are obliged to pay the resulting levies. In addition, the required registration of beneficiaries will also be delayed. However, it will be ensured that there is sufficient time for the necessary registration before the first notification of benefits can be submitted (at the earliest) from April 1, 2025. In addition, operators of electronic marketplaces and certain fulfillment service providers through which or by which the first provision of EWK products on the German market takes place are affected.

The notification of „Producers“ must be submitted to the UBA annually by May 15 each year. The content of the notification is the mass of EWK products placed on the German market for the first time by the respective „Producer“ in the previous calendar year (Section 11 EWKFondsG). Before a „Producer“ may report, an audit and confirmation by a registered expert (within the meaning of section 3 (15) German Packaging law = VerpackG) or an auditor, tax advisor or sworn accountant registered in accordance with section 27 (2) VerpackG is required. An exception to the audit obligation applies to „Producers“ who made less than 100 kg of the products concerned or exclusively deposit bottles available on the German market for the first time in the previous year. The notification must be made for the first time for 2024. On the basis of the notification broken down by type and mass of the EWK products, the levy is determined by notice. A specific levy rate is applied to the declared mass of the respective EWK product. The levy rates are announced by ordinance (see below), regularly reviewed and adjusted if necessary. If necessary, appeals can be lodged against the decision on the levy, but these have no suspensive effect. The due date of the levy, one month after receipt of the notice, is therefore not suspended.

Entitled parties within the meaning of the EWKFondsG are public waste disposal authorities (e. g. cities and municipalities) and other legal entities under public law that can report their collection or cleaning measures and other reimbursable services to the UBA. The funds paid in are distributed pro rata to the entitled parties. Processing of the required data reports will begin on January 1, 2025 and, like registration, will take place via the DIVID platform.

The „DIVID“ single-use plastics platform has now been activated by the UBA. The platform can be accessed via the following link: www.einwegkunststofffonds.de/en. DIVID enables the UBA to digitally process all registrations and payments from around 56,000 taxpayers and to make cost reimbursements to around 6,400 beneficiaries each year. The platform is the central instrument for fund-related communication between external users and the UBA as well as the associated internal management processes. Currently, in addition to certain registrations (--> „Login & Registration“ link), potentially affected parties can also carry out „self-checks“ and submit classification applications in order to have the UBA check whether they are „Producers“ within the meaning of the EWKFondsG or whether their products are subject to levies and, if applicable, which of the EWK product types they are to be assigned to. In contrast to the non-binding self-checks, a legally valid classification is carried out by the UBA for classification applications. Domestic „Producers“ have been able to register since April 1, 2024. Companies need an ELSTER company account to register on DIVID. The DIVID platform is linked to the ELSTER platform of the tax authorities, where the company account required for authentication can be created. The date from which registrations of „Producers“ without a branch in Germany will be possible is not yet known. However, it is currently already possible to create accounts for „Producers“ without a branch in Germany or for their authorized representatives. In addition, the UBA will use the platform to coordinate the administration and processing of the levies to be paid by the companies into the Single-Use Plastics Fund. Finally, the platform will be used to initiate the distribution of funds to the cities or municipalities.

Fees are charged for classification applications pursuant to Section 22 (1) EWKFondsG on „Producer“ status and / or on the question of whether products are considered EWK products. In contrast, registrations and self-checks are free of charge. The fees are time-based fees (Section 3 BMUVGmbH in conjunction with Section 15 of the Schedule of Fees and Annexes (= Annex to Section 2 (1) BMUVGmbH) in conjunction with Annex 1 of the AGebV). Furthermore, fees (also time-based fees) are charged if certain stages in the administrative procedure are reached (e. g. in the event of unsuccessful objections to the registration confirmation, the determination of the EWK levy or, in principle, the withdrawal of objections before an objection notice has been issued).

The levy rates were adopted by the German Bundestag on 28 September 2023 and published in the Federal Law Gazette (Federal Law Gazette I 2023, No. 274) in the form of the Ordinance to the EWKFondsG of 11 October 2023 (EWKFondsV). This means that the following levies will apply per kilogram of EWK products placed on the market in future:

1. food containers	€ 0,177
2. bags and foil packaging	€ 0,876
3. non-deposited beverage containers	€ 0,181
4. beverage containers with deposit	€ 0,001
5. beverage cups	€ 1,236
6. lightweight plastic carrier bags	€ 3,801
7. wet wipes	€ 0,061
8. balloons	€ 4,340
9. tobacco products with filters and filters for tobacco products	€ 8,972

The specific burden for the „Producers“ concerned results from the above-mentioned levy rates and the respective annual quantity made available on the German market.

Depending on the type of offence, **sanctions** are provided for „Producers“ as well as operators of electronic marketplaces and fulfilment service providers (Section 26 EWKFondsG). For example, the UBA is authorized to make an assessment in the event of missing or insufficient annual reporting. If payment of the levy due is more than three days late, a one per cent late payment surcharge will be imposed above a threshold of sufficiency. Intentional or negligent breaches of registration or reporting obligations constitute administrative offences punishable by a fine of up to € 100,000.

3. Practical advice

Market participants, who are affected, or at least cannot rule out being affected, should deal with the EWKFondsG immediately.

It must first be clarified whether the market participants and their products fall within the material and personal scope of application of the EWKFondsG. In supply chains, for example, this involves the question of who (still) manufactures or trades preliminary products and who ultimately makes the first supply of EWK products subject to the levy obligation on the German market. If necessary, registration in the UBA register should be initiated (prophylactically) and classification issues should be clarified in advance through the application process.

At the same time, the internal structures and processes (IT, CMS) should also be reviewed and adapted to ensure that the requirements of the EWKFondsG are met in the long term.

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