

## Product Risk Radar

### Germany introduces a Single-Use Plastic Levy

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#### What has happened?

In early 2023, the German legislature adopted the "Single-Use Plastic Fund Act" (in German: *Einwegkunststofffondsgesetz*, "**EWKFondsG**"). This new law requires manufacturers of specific single-use plastic products to cover the costs of waste collection, cleaning up litter resulting from those products and the subsequent transport and treatment of such litter. To this end, a "Single-Use Plastic Levy" ("**SUP Levy**") will be introduced. As a first step in this regard, manufacturers covered by the EWKFondsG must now comply with a registration obligation. The actual SUP Levy will then have to be paid from the year 2025 onwards.

#### Which types of single-use plastic products are covered by the EWKFondsG?

The new law only applies to the following types of single-use plastic products:

- Food containers, i.e., containers, such as boxes with or without lids, for foodstuffs
- Bags and foil packaging made of flexible material, such as wrappers, with food contents
- Beverage containers with a capacity of up to three litres
- Beverage cups, including their caps and lids
- Lightweight plastic carrier bags
- Wet wipes
- Balloons
- Tobacco products with filters, as well as filters intended for use in combination with tobacco products

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## Which manufacturers does the EWKFondsG apply to?

"Manufacturer" within the meaning of the EWKFondsG means any natural or legal person or partnership with legal capacity that:

- a) is established in Germany and, as a producer, filler, seller or importer, makes the above-listed types of single-use plastic products available on the German market for the first time, irrespective of the sales method, including distance selling contracts, or
- b) is not established within Germany and sells the above-listed types of single-use plastic products directly to private households or other users on a commercial basis by means of distance communication within Germany.

## Which are the most relevant obligations under the EWKFondsG?

- Since 1 January 2024, manufacturers must register electronically with the German Environment Agency (*Umweltbundesamt*, "UBA"). Manufacturers which have already been active on the German market at the afore-mentioned date, must do so by 31 December 2024 at the latest.
- From 1 January 2025 onwards, manufacturers will have to report – by 15 May of each year – electronically to UBA the type and quantity, in kilograms, of single-use plastic products placed on the market or sold in the preceding calendar year.
- Manufacturers that are not established in Germany must appoint an authorised representative established in Germany. Such authorised representative must meet the obligations under the EWKFondsG instead of the actual manufacturer (except for the registration obligation and the reporting obligation mentioned above, which must be fulfilled by the actual manufacturers themselves).
- From 1 January 2025 onwards, operators of an electronic marketplace may only host manufacturers who comply with the registration obligation. The same principle applies to fulfilment service providers.
- From 1 January 2025 onwards, manufacturers will have to pay an annual SUP Levy. To this end, each year the UBA will determine the amount of the SUP Levy to be paid via a written Fee Notice to be issued to each registered manufacturer. The SUP Levy will be due, in general, within one month after issuance of the Fee Notice. The first Fee Notice will be issued in 2025 with respect to the calendar year 2024.
- The rates for the SUP Levy imposed on the various products covered by the EWKFondsG are set out in detail by the Single-Use Plastic Fund Ordinance (in German: *Einwegkunststofffondsverordnung*, "EWKFondsV").
- The UBA may make a ruling as to whether a certain product qualifies as a single-use plastic product. Manufacturers may also ask the UBA for such a ruling.
- Violations of the EWKFondsG may trigger administrative fines of up to EUR 100,000.

## Where to seek further help?

Baker McKenzie has extensive experience with advising clients in respect of the ever-evolving German packaging law, including the recent new obligations concerning single-use plastic products. To discuss how your business can best position itself in respect of these issues, please contact one of our team today.

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## Contacts



**Ulrich Ellinghaus**

Partner  
Frankfurt

+49 69 2 99 08 251  
ulrich.ellinghaus  
@bakermckenzie.com



**Andreas Neumann**

Senior Associate  
Frankfurt

+49 69 2 99 08 310  
andreas.neumann  
@bakermckenzie.com