

ENVIRONMENTAL REGULATIONS: COMPLEX COMPLIANCE OBLIGATIONS

Business activities have an impact on the environment for sure. The increasing explosiveness of the issues of climate change and environmental protection is therefore prompting both the EU and national legislators to continuously increase the density of regulations in environmental law. Companies have no choice but to focus more closely on their environmental compliance.

However, by increasingly extensive EU and national requirements medium-sized companies are facing major challenges. It is hardly possible to keep an overview and meet the corresponding requirements.

In this brochure, we provide an overview of the current environmental regulations and are happy to assist you with their implementation at any time.

PACKAGING ACT

The regulations of the German Packaging Act are intended to prevent or reduce the environmental impact of packaging waste. For this purpose, the obligated parties are to prepare a possible reuse or recycling of the packaging already at the time of production or when it is first placed on the market. The Packaging Act dates back to 2017 and was reformed almost two and a half years after it came into force in 2021. The latest amendments came into force on 1 July 2023.

WHO IS AFFECTED?

The following are affected by the regulations of the Packaging Act:

- › manufacturers = initial distributors
- › importers
- › partly distributors
- › partly operators of electronic market places
- › partial final distributor of beverage packaging.

WHICH OBLIGATIONS HAVE TO BE FULFILLED?

The companies concerned must fulfill the following obligations:

- › obligation to participate in the system (b2c packaging) with a private system such as "Grüner Punkt", "Zentek" or "EKO-Punkt", for which a fee is charged
- › obligation to register with the public packaging register "LUCID"
- › obligation to report data for manufacturers of packaging that is required to participate in the system

- › obligation to submit a declaration of completeness for manufacturers of packaging subject to system participation, which exceeds a certain quantity of a material type
- › obligation to provide evidence
- › obligations to provide information, including from the final distributor of with beverages filled packaging.

WHAT ARE THE LEGAL CONSEQUENCES OF VIOLATING THE PACKAGING ACT?

Anyone who violates the Packaging Act is liable to the following sanctions:

- › fines from 10,000 EUR up to 200,000 EUR
- › ban on placing non-registered packaging on the market
- › prohibition of distribution of non-registered packaging
- › possibly civil claims for damages by competitors on the basis of Sec. 9 UWG (Unfair Competition Act)
- › packaging can be confiscated.

SINGLE-USE PLASTIC FUND ACT AND ORDINANCE

Manufacturers of single-use plastic products are to share in the costs of waste disposal in public spaces, especially in parks and streets, as well as in awareness-raising measures. To this end, the Single-Use Plastic Fund Act, or EWKFondsG, creates a fund into which manufacturers of certain single-use plastic products must pay a single-use plastic levy in a certain amount. The products concerned include to-go containers and beverage cups, as well as wet wipes, balloons and tobacco filter products. The amount of the levy paid by each manufacturer is determined by the type and quantity of the product he places on the market. The revenue from the fund is to be made available to municipalities to cover waste management costs. The Single-use Plastic Fund Ordinance, EWKFondsV, serves to determine the amount of the levy rates as well as the point system for the disbursement of the funds from the single-use plastic fund to public waste management authorities. The EWKFondsG came into force on 16 May 2023; the EWKFondsV will come into force on 31 December 2023.

WHO IS AFFECTED?

The following are affected by the Single-Use Plastic Fund Act:

- › manufacturers
- › partly distributors
- › partly operators of electronic marketplaces
- › partly fulfillment service providers.

The beneficiaries of the revenues from the Single-Use Plastic Fund are, in particular, public waste management authorities.

WHAT OBLIGATIONS MUST BE MET?

The following obligations apply to the group of persons affected by the Single-Use Plastic Fund Act:

- › obligation of the manufacturer to register with the register set up by the Federal Environment Agency
- › annual obligation to report product quantities by 15 May of each year for the previous calendar year. Reporting requires verification by a registered expert or auditor, tax advisor or certified public accountant, unless the relevant single-use plastic products from the previous year amounted to less than 100 kg.
- › obligation to pay a levy determined in accordance with the EWKFondsV.

If the obligations are not fulfilled, the following sanctions may be imposed:

- › confiscation of the products
- › prohibition of placing on the market and distribution of non-registered single-use plastics.

The beneficiaries of the fund are subject to the following obligations:

- › obligation to register with the Federal Environment Agency by 1 January 2024.
- › From 1 January 2024, annual reporting obligation by 15 May of the year in question in respect of the services provided (collection costs, cleaning costs, awareness-raising costs and data collection and transmission costs).

If they do not meet their obligations, no payment can be made from the single-use plastic fund.

CARBON BORDER ADJUSTMENT MECHANISM – CBAM

The EU Commission intends to implement the EU Green Deal primarily through the EU climate protection package “Fit for 55”. The aim is to reduce net greenhouse gas emissions, including CO₂ emissions, by at least 55% by 2030 compared with 1990. A cornerstone for this is the new CO₂ limit adjustment system (so-called Carbon Border Adjustment Mechanism, CBAM), which was concluded with Regulation (EU) 2023/956 and came into force on 17 May 2023.

The European CO₂ border adjustment mechanism obliges certain companies that import emission-intensive products into the EU to participate in emissions trading. This is intended to ensure equality between importers and manufacturers within the EU and to prevent the risk of carbon leakage. The CBAM applies to goods from the cement, electricity, fertilizer, chemicals, iron and steel, and aluminum sectors.

WHO IS AFFECTED?

Importers of goods from the cement, electricity, fertilizer, chemicals, iron and steel, and aluminum sectors are affected by the CBAM.

WHAT ARE THE OBLIGATIONS TO BE FULFILLED?

Affected importers must successively comply with the following obligations:

1 October 2023 - 31 December 2026

- › accounting and documentation of the direct and indirect emissions from the production process of the imported goods

- › quarterly submission of a report, for the first time as of 31 January 2024, with annexes
 - on the total quantity of each type of goods,
 - the actual total emissions calculated in accordance with the methodology described in Annex IV to Regulation (EU) 2023/956, and
 - at the CO₂ price paid in a country of origin for the emissions contained in the imported goods.

from 31 December 2024 onwards

- › obligation to register operators and installations in third countries.

from 1 January 2026 onwards

- › application for registration with the CBAM register
- › obligation to submit a CBAM declaration by 31 May of the following year for goods imported in the previous year, “grey emissions”, CBAM certificates and a copy of the test report of the accredited auditor
- › calculation of grey emissions according to Annex IV
- › obligation to provide detailed documentation.

WHAT ARE THE LEGAL CONSEQUENCES FOR VIOLATIONS OF CBAM?

The following sanctions apply for violations of the CBAM:

- › a fine of 100 to 500 EUR for each tonne of CO₂ equivalent for which the importer has not surrendered allowances
- › national administrative or criminal sanctions.

EU REGULATION FOR DEFORESTATION-FREE SUPPLY CHAINS

The EU Deforestation-Free Supply Chain Regulation (DFSC) introduces comprehensive due diligence requirements to protect global forests against deforestation and exploitation in connection with the production of various agricultural products. The aim is to ensure that certain raw materials and products imported into, exported from, or traded within the EU no longer contribute to deforestation and forest degradation. The products covered are timber, cattle, coffee, cocoa, rubber, palm oil and soy. Although these bans will not apply until 31 December 2024, the cut-off date for assessing whether the goods covered are free of deforestation is already 31 December 2020, meaning that importers and traders will have to prepare for the new due diligence requirements of the Forest Protection Regulation as early as 29 June 2023.

WHO IS AFFECTED?

The following are affected by the EU Regulation for deforestation-free supply chains:

- › market participants
- › traders.

Small and mid-sized market participants and traders (SME) will benefit from simplified due diligence requirements. Micro-enterprises do not have to comply with the DFSC until 30 June 2025.

WHICH OBLIGATIONS HAVE TO BE FULFILLED?

The following obligations result from the DFSC:

- › obligation to submit a due diligence declaration
- › introduction of due diligence systems and annual review and, if necessary, updating (does not apply to SME)
- › obligation to collect data
- › obligation to carry out an annual risk assessment
- › obligation to implement procedures and measures to minimize risk if a non-negligible risk is identified.

WHAT ARE THE LEGAL CONSEQUENCES OF VIOLATIONS OF THE FOREST PROTECTION REGULATION?

The following sanctions can be imposed for violations of the DFSC:

- › import/transport and export ban
- › confiscation of raw materials/products and revenues
- › exclusion from public procurement and from access to public financing
- › prohibition to apply the simplified due diligence according to Art. 13 of the Regulation
- › fines.

SUPPLY CHAIN DUE DILIGENCE ACT

The German Supply Chain Due Diligence Act (LkSG), which came into force on 1 January 2023, regulates corporate responsibility for compliance with human rights and environmental obligations in global supply chains. To this end, the LkSG obliges companies with their head office, principal place of business, administrative headquarters, statutory seat or branch office in Germany to implement defined due diligence obligations. This is intended to protect certain legal assets along the global supply chain.

WHO IS AFFECTED?

The LkSG is aimed at:

- › as of 1 January 2023: companies headquartered in Germany with at least 3,000 employees
- › from 1 January 2024 onwards: : companies based in Germany with at least 1,000 employees.

WHAT OBLIGATIONS MUST BE FULFILLED?

The affected companies must fulfill the following obligations:

- › establishment of a risk management system
- › definition of an internal responsibility
- › annual performance of risk analyses in the company's own business area and for direct suppliers
- › occasion-related risk analysis for indirect suppliers
- › issuance of a policy statement
- › establishment of preventive measures in own business area and vis-à-vis direct suppliers

- › taking corrective action
- › establishment of a complaints procedure
- › implementation of due diligence with regard to risks at indirect suppliers
- › documentation requirement; with seven-year retention requirement
- › annual reporting no later than four months after the end of the business year
- › obligation to provide information and to surrender data
- › obligation to tolerate and cooperate.

WHAT ARE THE LEGAL CONSEQUENCES OF VIOLATING THE LKSG?

The following sanctions may be imposed for violations of the LkSG:

- › fines of up to 800,000 EUR
- › for annual sales of more than 400 million EUR, up to 2% of worldwide sales as a penalty
- › exclusion from public contracts for up to three years for fines of 175,000 EUR or more.

YOUR CONTACT PERSONS



The contact persons you know at Ebner Stolz as well as the experts in ESG-Compliance will be happy to provide you with further information.

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