PRODUCER RESPONSIBILITY

AND INTEGRATED PRODUCT POLICY IN BELGIUM

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1. Producer responsibility

1.1. The Federal Act of 1998 on product standards

In Belgium, the competencies for setting standards regarding the entry of a product on the market are left to the Federal State, although the Regions are in charge of waste management and industrial control policies.

A Federal Act of 1998 on product standards provides for the general framework under which the Government can adopt a policy in favour of sustainable development and health protection through the promotion of sustainable production and consumption patterns.

Article 4 of the Act imposes that *« all products put on the market must be devised in such a way that their manufacturing, normal use and disposal does not impair health and does not contribute, or the least possible, to an augmentation of the quantity and the noxiousness of waste and other forms of pollution ».*

This is thus a general requirement, bearing on the producers, to make sure the products put on the market shall be favourable to human health and environmentally sound. It is a specific duty to care –obligation that reflects producer responsibility.

No penal or administrative sanctions are linked to the infringement of this important article, which therefore has more the character of a general guideline, rather than a proper legal obligation. However, one cannot exclude that an infringement of this obligation can be the subject of a civil sanction, especially a suspension order delivered by the President of the District Court on the basis of the Environment Law Suits Act of 1993 (on request of an environmental ngo) or delivered by the President of the Trade Tribunal, on the basis of the Trade Practices Act of 1991 (on request of a competitor). However, it will be difficult to argue that the conditions for a suspension order are met, because only "obvious" infringements of Environmental Law can be suspended under the Environmental Law Suits Act. To prove that a given product isn't obvious in conformity with the duty to care obligation seems difficult, because of the very general nature of that obligation.

The Federal Product Standards Act forms the legal basis under which the Government is called to act in product standards matters, including chemicals, pesticides, packaging (for the federal competencies only), etc….It also provides for the possibility to proceed by the conclusion of voluntary agreements with the industries in order to meet environmental goals regarding the marketing of products. When concluded with representative organisations of

trade and industry, this so-called "sector-agreements" are binding for those companies who are member of the organisation.

Regarding packaging, the Act is promising in the sense that it forbids the marketing of products in packaging which are neither reusable, nor recoverable (including recyclable) and it imposes on the producer a « standstill » requirement according to which the weight of the packaging should increase, for a same product, in comparison with its weight at the datum of the entry into force of the Act (art.11). However, those provisions staid a dead letter so far and are not complied with.

The Act imposes also essential requirements for both reusable (art. 12) and non–reusable (art. 13) packaging and authorises federal government to impose technical standards for all types of packaging (art. 14). On the basis of this article, a royal decree of 25 May 1999 limits the content of heavy metals of packaging, transposing the European obligations in this respect (Directive CE 94/62/CE + derogating Decisions)

1.2. The Eco-tax Act of 1993

Quite famous abroad, the Eco-tax regime which was set in Belgium in 1993[1] has suffered so many modifications, re-orientations and delays that it cannot be considered as having lead to a very large success so far regarding producer responsibility.

One recent development is worth noticing however, due to recent legislative modifications in 2002 and 2003[2].

If we take the example of *beverage containers*, the regime is not built around a lone tax any more but around a balanced instrument, made of two branches:

- a diminution of the VAT or Excises on ALL beverage containers (the « ecobonus ») ;
- the adjunction of a new levy (« the packaging contribution » set at € 9,8537 per hectolitre packed product) for the containers which are not reusable nor recyclable or which does not contain a minimum level of recycled fibres.

As a result, the reusable container shall directly benefit from the diminution of the Excises or VAT rates. On the contrary, the non-environmentally friendly container shall not benefit from such a fiscal reduction, due to the fact the original benefit is counterbalanced by the new levy.

Within this regime, the favoured packaging gets the chance to be sold at a lower price. But the prices of the other containers should not rise. Under the former ecotax regime, the non favoured container were made more expensive.

Any fraud by the producer, importer, fiscal representative or retailer regarding the ecotaxes shall be sanctioned under the Act by a fine. The frauds regarding beverage containers are dealt with in conformity with the regime which is applicable to excise duties.

The new regime for beverage containers shall enter into force in April 2004.

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[1] See D. MISONNE, "A short note on Belgian ecotaxes", *ELNI newsletter*, 1995

[2] The last modification was brought by an Act of 22 December 2003, M.B. 31 December 2003.

There are also eco-taxes on *disposable camera's* (€ 7,44 per item), *batteries* (€ 0,50 per item) and *some industrial packaging (*of ink, glue and solvents) (from € 0,6197 to € 12,3947 depending on the volume) with a possibility to avoid this taxes in setting up a scheme for collecting these products after use with a view of reusing or recycling them, subject to performance standards varying according to the type of product. For disposable camera's an exemption of the eco-tax is given if the sector sets up a collection system of used camera's that permits to re-use or recycle 80 % of the collected items. For batteries that are subject of a deposit or return fee (of minimum € 0,24 per item) an exemption is also given. The same applies when the sector sets up a collection and recycling-system, that is financed by a collection fee (€ 0,12 per item), and that assures that 65 % of the used batteries is collected. In practice this is done by BEBAT, an organisation of the sector concerned[3]. The collected items must be recycled or disposed of, according to the BATNEEC-principle. For industrial packaging an exemption is given for the packaging that is subject of a deposit (€ 0,30 per volume-unit), a return-premium (€ 0,12 per volume-unit), a packaging credit or a special and adapted treatment. This system is accepted when it assures that 70 % of the packaging of glue and 85 % of the packaging of ink is returned and re-used, recycled or disposed of in an environmental acceptable way.

1.3. Regional legislation on waste from packaging : the co-operation agreement

Packaging is dealt with at various levels in Belgium.

Regarding the legislation controlling the entry on the market and the composition of the goods, we already presented here above the Product Standards Act of 1998, regarding the requirements set for putting the packaging on the market , the Eco-tax Act of 1993, contains a fiscal regime aiming at discouraging the use of non-reusable or non recycled beverage containers.

The management of waste, packaging-waste included, is a matter left to the Regions.

Adopted in order to implement the EC Directive on packaging, a Co-operation Agreement of 1996, which has been approved by the Parliament of each of the three Regions, sets precise percentages to be met, each year within each of the region in order to improve packaging recycling and recovery (see the Appendix). The minimum overall recovery and recycling targets for packaging waste, expressed in terms of weight percentage, in relation to the total weight of one-way packaging on the Belgian marked, are since 1999 the following: recycling: 50%; total recovery: 80%. In this field, the regional laws dealing with waste management are quite coherent with each other due to the adoption of this common legislation

Regarding producer responsibility, the agreement imposes to the person « which is responsible of the packaging » (that is the producer, the manufacturer, the importer or even, in some cases, the professional consumer) the obligation to elaborate a general prevention plan which describes how he intends to improve the quality of the packaging and reduce waste.

The same person is submitted to a « take-back » obligation, which he can delegate to a third party (an accredited body) , fulfilling the accreditation requirements set by the authorities.

[3] For more information: http://www.bebat.be/. According to BEBAT in 2001 more than 60 % of the batteries put on the Belgian market were collected again (2.325 tonnes). Since 1999 the percentage of recycling is over 60 % (1.479 tonnes in 2000). In 2000 1.706 tonnes were recovered (including thermal valorisation).

This is what happened, with the creation, by the Industry, of various accredited bodies specialised in take-back obligations, among which FOST Plus[4] and VAL-I-Pac.[5]

As household-packaging is concerned, FOST Plus is the main organisation of the packaging-chain[6]; nearly all producers and importers are member of this non-profit organisation[7] and they pay a contribution to this organisation in function of the type and the volume of packaging placed on the market (together with the products). FOST Plus concluded agreements with virtually all the local governments, which are normally in charge of collection and treatment of household waste. At the beginning of 2003 93, 8 % of the population was served[8]. FOST Plus finances the selective collection of household packaging-waste, witch is operated in practice by local authorities. The trough the "blue sack" collected packaging waste goes to the recycling industry, under the responsibility of and financed by Fost Plus. In 2002 107,87 kg. household packaging waste per inhabitant was collected. 84,1 % of the packaging put on the market by FOST Plus Members was recycled, 86,8 % was recovered (including energy recovery)[9].

The obligations imposed by the Agreement are controlled by « the interregional Commission for packaging », a specific body headed by representatives of each of the three Regions. The Commission plays also a role in diffusing information on the necessity to prevent and manage packaging to the consumers[10].

Right now there is a discussion between the three regional governments and the packaging-chain about the new accreditation requirements to impose on FOST Plus. The Flemish Environment Minister takes the view that FOST Plus must accept – and thus recycle or dispose of in a environmental sound manner on behalf of the producers – all packaging waste with a "green dot" on it (the green dot means that the producer is member of FOST Plus and pays his contribution). This is on the moment not the case. It is not allowed to put packaging of e.g. butter, margarine, mayonnaise, yoghurt, etc. in the "blue sack", so that this type of packaging will be in the sack that falls under the responsibility of local government and collection and treatment will be financed by the taxpayers[11].

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[4] Decision 23 December 1998, amended by Decision 10 January 2002.

[5] Decision 31 March 1999, amended by Decision 13 December 2001; for more information on this organisation: http://www.valipac.be.

[6] You can find more information on the website of FOST Plus: http://www.fostplus.be/

[7] In 2002 FOST Plus counted 6.465 members, representing 719.000 tonnes of packaging put on the marked that year. The members paid a total of € 86.213.000 contributions. See: FOST Plus, *Facts & Figures 2002*, p. 4.

[8] FOST Plus, *Facts & Figures 2002*, p. 12

[9] *Ibid.,* p. 22.

[10] You can find more information on the website of this Commission: http://www.ivcie.be/

[11] The accreditation requirements provides that FOST Plus must pay the real and complete costs made by local authorities for selective collection of household packaging waste. As PMD-waste (plastics, metal and drink cartons) is concerned, the accreditation requirements says that FOST Plus pays the cost of selective collection, sorting and recovery of PMD-waste as far as the total amount of "residue" (after sorting) don't exceed 25 % (1999) or 20 % (from 2000 on). "PMD-residue" is packaging that is not recycled (packaging of butter or margarine, cans with residues of food, contaminated plastics…) and is in principle not allowed in the bleu sack. This restriction is challenged before the Council of State by local authorities. The demand for suspension of this provision was however rejected because of lack of a difficult to repair serious harm. The Council found that the financial consequences of this provision for local authorities were limited and the local authorities could avoid exceeding this percentages by informing the people correctly on what type of packaging waste can and what type of packaging waste cannot be put in the blue sack and by controlling this during collection (the blue sacks are transparent to allow this check) (Raad van State, N°. 81.394, 28 June 1999, *c.v.b.a. Intercommunale voor*

Questions can also be raised concerning the contribution- policy of FOST Plus. The question is if this policy reflects sufficiently the producer responsibility-principle. Although the Member contribution's are function of the packaging material concerned[12], one has the impression that this tariffs don't reflect fully the real collection and recycling cost in function of the material used. Good materials (with low net-costs of recycling or even benefits) pay to some extend for the bad.

1.4. Regional legislation regarding waste and take-back obligations

Each region has adopted a general framework dealing with issues of waste management. In the Flemish region the principle of tack-back obligations was introduced in the Waste Prevention and –Management Decree of 1981 by the 1994 Amendments. Art. 10 of the Decree states that Flemish government decides for witch categories of waste there will be a take-back obligation for producers, importers, retailers and sellers, in view of recycling or efficient disposal of waste. The Decree leaves room for two variants of this obligation: a) tack back- obligation only when the consumer buys a new product (V1) and b) tack back-obligation also when the consumer don't buys a new product (V2). The Decree allows that producers, importers, retailers and sellers can delegate this obligation to a third party, under the conditions determined by Flemish government. Tack-back obligations can also be introduced by Environmental Covenants between government and industry.

For some categories of wastes (or end of live products) such take-back obligations were effectively introduced by the Flemish Government Waste Prevention and –Management Regulations 1997 (VLAREA). This is the case for:
- paper (V1);
- batteries and accumulators (V2):
- end of life vehicles (V1 from 1.07.1999; V2 from 1.04.2004);
- used tyres (id.)
- electronic equipment ("brown- and white-goods") (id.)

For each of these categories – paper excepted – specialised organisations (BEBAT, FEBELAUTO[13], RECYTYRE[14], RECUPEL[15]) were set-up by industry and commerce concerned in the form of an non-profit organisations to take care of this obligations. Their obligations are specified in Environmental Covenants[16]. Often there is a specific recycling-contribution of consumers while buying a new product to finance these activities. For electric and electronic equipment for example, these contributions range from € 0,1 (calculators,

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ontwikkeling van het Gewest Mechelen en Omgeving (IGEMO) t. Interregionale Verpakkingscommissie – ex parte v.z.w. Fost Plus). The Council of State has not already delivered his judgement on the merits of the case.

[12] In 2004 the following tariffs are applicable (expressed in €ct/kg): (a) glass : 2,93 ; (b) paper/cardboard ; 1,51 ; (c) steel : 5,14 ; (d) aluminium : 12,93 ; (e) PET : 28,89 ; (f) HDPE : 28,89 ; (g) drink cartons : 22,79 ; (h) other recoverable : 37,54 ; (i) other, non recoverable : 41,29.

[13] For more information: http://www.febelauto.be/

[14] For more information: http://www.recytyre.be/. However, this organisation is for the moment not operational, due to legal disputes (infra).

[15] For more information: http://www.recupel.be/

[16] See for used tyres : Milieubeleidsovereenkomst betreffende de uitvoering van de Vlarea-aanvaardingsplicht afvalbanden, *Moniteur belge*, 18 November 2003 ; for batteries : Milieubeleidsovereenkomst betreffende de uitvoering van de Vlarea-aanvaardingsplicht afvalbatterijen and Milieubeleidsovereenkomst betreffende de uitvoering van de Vlarea-aanvaardingsplicht afvalloodstartbatterijen, *Moniteur belge*, 18 November 2003 ; for electric and electronic equipment : Mileubeleidsovereenkomst betreffende de uitvoering van de Vlarea-aanvaardingsplicht van afgedankte elektrische en elektronische apparatuur, *Moniteur belge*, 31 May 2001.

alarms, ...), over € 3,00 (aspirators, …) to € 20,00 (refrigerators,…). These contributions must be mentioned separately on the invoice[17]. The Environmental Covenants specify also the minimum collection, recycling or re-use and recovery rates to be obtained. For used tyres the aim is to collect in 2005 all the used tyres that comes out the replacement-market, to re-use at least 25 % of them, after reshaping, to recycle at least 20 % of them and to recover (energy recuperation) the rest of them. For batteries the collection rate is set at 75 % (95 % for accumulators). Recycling-targets are varying from 65 % to 80 %, depending on the type. For electric and electronic equipment the minimum targets concerning recycling and recovery of the collected items are the following (from 2001 on): 95% reuse or recycling of non ferro metals; 95 % reuse or recycling of ferro metals; 100 % recovery of plastics (minimum 20 % reuse or recycling.)

The Walloon Decree of 1996 sets all the basic requirements to be met regarding the management of waste, on top of the requirements set in the specific regional legislation dealing with authorisation processes.

A recent Regulation of the Walloon Government of April 25, 2002, adopted in application of the Decree, imposes a take-back obligation to the producers, importers or any person who did put the product on the market, for various categories of waste :
- old tyres
- batteries
- paper waste
- end-of-life medicines
- end-of-life vehicles
- electric and electronic waste
- end-of-life plastics used in agriculture
- bulbs, toys, electric devices
- lead batteries
- frying oils and other oils
- etc…

Those take-back obligations can be met according to three kind of schemes :
- either the collection is organised by each producer or importer on an individual basis ;
- either the collection is made by an organism fulfilling agreement requirements ;
- either an « environmental agreement » is concluded between the producers or importers and the Region, according to the legal framework set by the Decree of 20 December 2001 on environmental agreements (covenants).

It is indeed this last option which is has been favoured by the Industry so far in the Walloon region, with the conclusion of agreements on old tyres in January 2003 and lead batteries in January 2003. Previous agreements, dealing with end-of life medicines, batteries, end-of-life vehicles, *paper waste* and electric equipment (white goods) are also still into force[18].

[17] RECUPEL announced that in the future, to comply with the EEE-Directive, this will be no longer the case and the contribution will be integrated in the price of the product (Press Release
[18] For more information, see http://mrw.wallonie.be/dgrne

1.5. Competition issues

In Belgium all take-back organisations are set-up by the industry and trade sectors concerned in the form of non-profit organisations. That legal form is required by the legislation or by Environmental Covenants and the authorities are pushing the sectors to set up those type of organisations. These organisations, that are in charge of the general management of the schemes and are financing them, are working with different economic operators that do the real work on the ground (transport, sorting, recycling..). They launch regularly tenders to find those partners. Competition between economic actors thus plays a normal role at that level.
There is little litigation about competition issues linked to the various schemes. We are aware only of one case that is still pending. In October 2003 a company (Eurokarkas) working on the used tyres-market, obtained by a unilateral and fast procedure – without intervention of the other concerned parties – a suspension of the entry into force of the entire RECYTYRE-scheme from the Trade Tribunal in Brussels. Meanwhile, this suspension order is cancelled by the same Tribunal on appeal and this on procedural grounds. The case is, as the merits are concerned, still pending before the President of the Trade Tribunal[19].

2. Integrated Product Policy

2.1. Waiting for a Plan on Product Policy at Federal Level

A project for a Federal plan on Product Policy had been prepared by the administration of the Federal Minister for the Environment in 2003.

The plan was well documented, including 144 actions to improve the quality of the environment by focussing on products, either in a direct or indirect way (by the promotion of research, for instance). On the basis of this plan, round tables were to be organised to collect the reaction of stakeholders and to target the products and measures which should be dealt with at first, as a priority, under the future policy.

The plan had serious shortcomings. Among those on which the Belgian Federal Council for Sustainable Development[20] shed light in the advice it gave in 2003, were :
- the large discrepancy between the ambition of the plan and the budget allocated under it to fulfil the future commitments ;
- the lack of vision in the general objectives ;
- the absence of action on chemicals, to be dealt with under another plan (and via another administration).

[19] Trade Tribunal, Brussels, 15 January 2004, v.z.w. RECYTYRE v. n.v. EUROKARKAS, not reported.
[20] The FCSD is an advisory body that advises the Belgian federal authorities about the federal policy on sustainable development. It was set up in 1997, in succession to the National Council for Sustainable Development which functioned as from 1993. The FRDO-CFDD was established by the law of May 5, 1997, regulating the co-ordination of the federal policy on sustainable development. The FRDO-CFDD advises the federal authorities about that policy, at the federal government's and parliament's request, as well as on its own initiative.

It was also fiercely criticised by the Industry, on the basis of the fact that the Plan did not sufficiently take into account the effect the proposed measures would have on the economy.

As a consequence, the plan was dropped before the Federal elections of last year and has not emerged again with the new Government. Indeed, since then, no new proper plan focussing on product policy has yet been proposed by the Minister for the Environment.

2.2. A division of powers which does not favour an Integrated Product Policy

Another criticism about the project of plan which was proposed in 2003 could also have been that it did not fully reflect the concept of integrated product policy. Proposed at federal level without any intervention of the regions, its scope did only deal with the federal competencies regarding products, that is to say the competence for regulating the entry of products on the market. Waste management and control of industrial processes, both very important components of an approach taking into account the full life-cycle of a product, are indeed left to the regions and were not dealt with under the Plan.

A proper plan for an integrated product policy would, as a consequence, require the involvement of both the regions and the federal state.

Still, there is a possibility for the federal level to take the lead on the subject, when one consider the potential impact of the requirements set for the entry on the market of a product on the other stadiums of its life cycle, as summarised hereunder.

<table>
<tr><th colspan="2">Extraction or import raw materials</th><th>Industrial processes</th><th>Entry on the market</th><th>Use</th><th>Waste management</th></tr>
<tr><td>Extrac-tion</td><td>Import</td><td rowspan="2">Regions</td><td rowspan="2">Federal</td><td rowspan="2">Regions</td><td rowspan="2">Regions</td></tr>
<tr><td>Regions</td><td>EC level / Federal</td></tr>
<tr><td colspan="6">< ---------- Influence of federal product standards, set for entering the market ----------→</td></tr>
<tr><td colspan="2">The product standards has an influence on the type and quantities of raw materials which shall be extracted or imported</td><td>The product standards can provoke changes in the industrial processes</td><td>The product standards governs the way the product can be used</td><td colspan="2">The composition of a product and its admission on the market has an impact on waste management</td></tr>
</table>

2.3. Other current developments

The important issues in product policies in Belgium currently are:

- the legislation on GMO's : the directive 2001/18/EC has not been implemented yet; the former government could not reach agreement on the regulations to implement the directive; liberal ministers opposed the by green ministers proposed further going obligations, especially the obligation to undertake a "ethical assessment" on a case by case basis for every demand of authorising the release of GMO's was at the heart of the row ;
- the debates on the future directive on eco-design for energy-using equipment's ;
- the follow-up of the Communication on IPP under the Irish presidency;
- the preparation of a first reduction programme concerning pesticides.

3. Conclusion

There is no conclusive evidence that the application of instruments of producer responsibility in Belgium have led to important changes in product-design, so that products are more re-usable or recyclable than before[21]. The main objective of producer responsibility is for sure not yet reached in a way that can be measured.

However, this means not that there are no results at all. On the contrary, with the introduction of tack-back obligations the selective collection of some important waste streams was realised with great success and an important part of these waste streams is now recycled or recovered. In 1991 in Flanders only 429.000 tonnes of household waste was collected on a selective manner (compared with 1.912.000 tonnes that was not selectively collected). In 2002 2.316.000 tonnes is selective collected (compared with 1.014.000 tonnes that is non-selective collected). The result is that household waste to disposed of is decreasing from year to year.

Recycling and recovering has become an important business in Belgium. In 2002 84 % of the packaging put on the market by FOST Plus was recycled for a total cost of less than € 10 euro per inhabitant. 600.000 tonnes of packaging was recycled, so that around the same amount of primary materials could be saved. Also in terms of employment the schemes are considered as positive, creating employment for low skill workers. The organisations concerned argue that their approach is effective and not to expensive. According to FOST Plus the system is 2,5 times less expensive than in Germany, for the same recycling results.

[21] The latest Environment and Nature Report of the Flemish region shows a positive "prevention indicator" (this indicator is expressed in consumption waste per consumption unit). The indicator rose from 100 (1996) to 108 (1997) and began than a decrease movement. In 2001 he stood at 96. In 2002 there was, for the first time, no increase in household waste production per capita. There was on the contrary a decrease of 3kg/inhabitant. See: VMM, *Milieu- en natuurrapport Vlaanderen in zakformaat, MIRA-T 2003 thema' s.*

Appendix

Interregional Co-operation Agreement of 30 May 1996 on the prevention and management of packaging waste, as amended by Co-operation Agreement of 9 May 2003.

[*Moniteur belge*, 5 March 1997; Amendment: *Moniteur belge*, 30 June 2003)

[In force since 5 March 1997]

Having regard to Council Directive of 75/442/EEC of 15 July 1975 on waste, altered by Directive 91/156/EEC of 18 March 1991;

Having regard to European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste;

Having regard to the special act of 8 August 1980 on the reform of the institutions, altered by the special act of 8 August 1988 and in particular article 92bis, §1, and article 6, §1, II, II 2., and the special act of 16 July 1993 for the creation of the federal state structure;

Having regard to the decree of the Flemish Council of 2 July 1981 on the prevention and management of waste, the decree of the Walloon regional council of 5 July 1985 on waste and the ordinance of the Brussels Capital Council of 7 March 1991 on the prevention and management of waste;

Whereas packaging waste constitutes a major part of the waste products that are generated on Belgian territory and that it is essential that all parties involved in the production, use, import and distribution of packaged goods become more conscious of the role of packaging in generating waste, and that these parties assume their responsibilities for such waste according to the “polluter pays principle”;

Whereas parties subject to private law to whom those responsible for household packaging entrust their waste recovery obligations fulfil a public service mission, under the supervision of the government;

Whereas, in line with the European Union’s and the Regions’ strategies for waste management, the management of packaging and packaging waste should include as a first priority, the prevention of packaging waste, and, as additional fundamental principles, the reuse of packaging, recycling and other forms of recovering packaging waste and, hence, reduction of the final disposal of such waste;

Whereas it is essential that collective measures concerning the prevention and management of packaging waste should be taken in the three Regions in order, on the one hand, to prevent any impact of such waste on the environment there or to reduce such an impact, thus providing a high level of environmental protection, without, on the other hand, disrupting the overall functioning of the internal market of monetary union in Belgium;

Whereas only an Interregional Co-operation Agreement with force of law offers sufficient guarantees to apply a single regulation in the whole of Belgium.

CHAPTER 1- General dispositions

Article 1.

This Interregional Co-operation Agreement is directly applicable in the Brussels Capital Region, the Flemish Region and the Walloon Region.

Except for contrary dispositions, this Interregional Agreement shall apply without prejudice to existing interregional legislation on the prevention and management of packaging waste. This Interregional Agreement shall apply without prejudice to the powers of the local or urban authorities with regard to public health and safety on the public highways.

This Interregional co-operation agreement is applicable to the removal and processing/handling of packaging waste of both household and industrial origin, without prejudice to the power of local authorities and the Brussels conglomeration to issue, within the scope of their powers, additional regulations on the collecting of packaging waste.

Article 2.

For the application of the present Interregional Co-operation Agreement, these definitions will be adopted:

1. “Packaging” shall mean all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or consumer;

2. “Sales packaging or primary packaging” shall mean packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;

3. “Grouped or secondary packaging” shall mean packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units, whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it may be removed from the product without affecting its characteristics;

4. “Transport or tertiary packaging” shall mean packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packaging in order to prevent physical handling and transport damage. Transport packaging does not include road, rail, ship or air containers;

5. “Packaging waste” shall mean any packaging or packaging material covered by the definition of waste in Directive 75/442/EEC, excluding production residues;

6. “Household packaging waste” shall mean packaging waste originating from the normal functioning of households and packaging waste assimilated herewith. The three regional governments shall draw up a common list of packaging waste products which are assimilated to household packaging waste;

7. “Industrial packaging waste” shall mean any packaging waste which cannot be considered as household packaging waste;

8. “Reusable packaging” shall mean any packaging conceived and designed to accomplish within its lifecycle a minimum number of trips or rotations, in which it is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled; such reusable packaging will become packaging waste when no longer subject to reuse;

9. “One-way packaging” shall mean any packaging which is not reusable packaging in the sense of section 8;

10. “Packaging material” shall mean simple or compound material of natural or artificial origin of which packaging consists;

11. “Prevention”shall mean the reduction of the quantity and of the harmfulness for the environment of:

a) materials and substances contained in packaging and packaging waste;
b) packaging and packaging waste at production process level and at the marketing, distribution, utilisation and elimination stages, in particular by developing “clean” products and technology;

12. “Recovery” shall mean any of the applicable operations referred to in Annex II.B to Directive 75/442/EEC on waste products;

13. “Energy recovery” shall mean the use of combustible packaging waste as a means to generate energy through direct incineration with or without other waste but with recovery of heat;

14. “Recycling” shall mean the reprocessing in a production process of waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery;

15. “Organic recycling” shall mean the aerobic (composting) or anaerobic (biomethanisation) treatment, under controlled conditions and using micro-organisms, of the biodegradable parts of packaging waste, which produces stabilised organic residues or methane. Landfill shall not be considered a form of organic recycling.

16. Disposal” shall mean any of the applicable operations referred to in Annex II.A to directive 75/442/EEC;

17. “Collection” shall mean the collection and sorting, with or without reassembly, of waste products;

18. “Take-back obligation” shall mean the obligation imposed on parties responsible for packaging to meet, in the light of the objectives of the present co-operation agreement, the recovery and recycling quotas referred to in article 3, §§ 2 and 3 of the present co-operation agreement;

19. “Party responsible for packaging” shall mean
a) any party who packages or has had goods packaged in Belgium with a view to or as a result of marketing them,
b) where products brought on to the Belgian market have not been packaged in Belgium, the party importing the packaged goods who does not consume them,
c) where industrial packaging waste is concerned of products that have not been packaged by a party as referred to in a) and have not been imported by a party referred to in b), the one that consumes the packaged goods;

20. “Seller” shall mean any party who, with a view to selling goods, offers packaged goods to consumers in Belgium;

21. “Retailer” shall mean the physical person or legal entity selling products and goods in public in one or more points of sale whose combined selling or consumption area is less than or equal to 200 m2;

22. “Accredited body “shall mean, according to articles 9 and 10 of the present agreement, an accredited legal body which accounts for the take-back obligation incumbent on parties responsible for packaging;

23. “Interregional Packaging Commission” shall mean the commission referred to in article 22 of this co-operation agreement charged with certain administrative, supervisory and advisory functions within the scope of this agreement;

24. “Competent regional administration” shall mean the Openbare Afvalstoffenmaatschappij voor het Vlaamse Gewest (OVAM) for the Flemish Region, La Direction Générale des Ressources Naturelles et de l’Environnement du Ministère de la Région wallonne (DGRNE) for the Walloon Region and Het Brussels Instituut voor Milieubeheer (BIM), the Brussels Institute for Environmental Management, for the Brussels Capital Region;

25. “Regional plan for waste products” shall mean the plan or plans adopted by the regions in application of article 7 of Council Directive 75/442/EEC on waste products and of article 14 of Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste.

Art. 3

§ 1. The present co-operation agreement is applicable to all transport, grouped or sales packaging and packaging waste, and aims to:

1) prevent or reduce the production or the harmfulness of packaging waste;

2) guarantee that the share of reusable packaging for the same goods that have been brought on the market does not fall in comparison with previous years and guarantee that the total volume of one-way packaging for the same goods that have been brought on the market, is reduced in comparison with previous years;

3) promote the reuse and promote and if necessary require recovery, in particular recycling, in order to prevent or restrict incineration without energy recovery and the dumping of packaging waste;

4) charge, within the limits and stipulations of the present co-operation agreement, the parties responsible for packaging with the total and real costs of the collection, recovery and elimination of packaging waste, by means of implementing the take-back obligation;

5) implement and organise an obligation to provide information incumbent upon parties responsible for packaging and other parties involved in the production and bringing on the market of packaged goods or the taking back of packaging waste.

§2. The minimum overall recovery and recycling targets for packaging waste, expressed in terms of weight percentage, in relation to the total weight of one-way packaging on the Belgian market, are:

for 1996:
-recycling: 35%
-total recovery: 50%

for 1997:
-recycling: 40%
-total recovery: 60%

for 1998:
-recycling: 45%
-total recovery: 70%

for 1999:
-recycling: 50%
- total recovery: 80%

These targets have to be met in every region, for both household as industrial packaging waste.

The recovery and recycling targets which have to be met are calculated pursuant to the methods established by the Interregional Packaging Commission. The total recovery target is equal to the sum of the achieved recycling, organic recycling and energy recovery targets.
The calculation for 1996 is made on the basis of the period extending between the entry into force of the present co-operation agreement and December 31 1996.
No later than January 1 1999, the Interregional Packaging Commission shall formulate proposals to the Regions with a view to raising the targets referred to in subsection 1 of this

section. These targets shall be fixed with a view to the objective of the total recovery of all packaging waste and the full transfer of the costs of the management of packing waste to those responsible for packaging.

§3. Before January 1 1998, a minimum recycling target of at least 15% has to be reached for every sort of packaging waste in both household and industrial packaging in proportion to the total weight of each kind of one-way packaging material brought on the Belgian market in the previous year.

CHAPTER II. General prevention plan

Art. 4.

§ 1. Every three years and for the first time one year after the coming into force of the present co-operation agreement, all parties responsible for packaging waste as referred to in article 2, 19, a) who have packaged or caused to be packaged products with at least ten tonnes of packaging per year are obliged to present a general prevention plan to the Interregional Packaging Commission.

This plan shall outline the preventive measures envisaged by the party responsible for packaging with regard to the regional waste management plans. The plan shall describe in particular the measures envisaged and the calculated aims concerning:

(a) the increase in the amount of recyclable packaging in proportion to the amount of non recyclable packaging;
(b) the increase in the amount of reusable packaging in proportion to the amount of packaging;
(c) the improvement of the physical qualities and features of packaging with a view either to ensuring that packaging is able to withstand more than one trip or rotations under the normal expected operating conditions or to recycling it;
(d) the improvement of the physical qualities and chemical composition of packaging with a view to decreasing the harmful character of the materials which it contains, and to reducing the impact on the environment during the management of packaging waste;
(e) the reduction of the amount of one-way packaging.

§2. In each sector of economic activity, the party responsible for packaging referred to in § 1 may by agreement entrust the obligations arising from this article to a legal body.

At the suggestion of the Interregional Packaging Commission, the regional governments may determine the conditions of this delegation.

Art. 5

§ 1. The Interregional Packaging Commission shall assess all general prevention plans and approve or reject them as it deems fit.

In the event of rejection, the rejected prevention plan must be resubmitted within the period determined by the Interregional Packaging Commission, taking into account the observations formulated by it.

CHAPTER III. Management of packaging waste

Section 1. Take-back obligation for parties responsible for packaging

Art. 6.

All parties responsible for packaging are subject to a take-back obligation.

If the party responsible for packaging is the party referred to in article 2, 19)a) or b, the targets referred to in article 3, §§ 2 and 3, are expressed in weight percentages in proportion to the total weight of the one-way packaging brought on the market during the previous calendar year.

If the party responsible for packaging is the party referred to in article 2, 19), the targets referred to in article 3, §§ 2 and 3, are expressed in weight percentages, in proportion to the total weight of the one-way packaging originating from the goods used by the party responsible for packaging, which have not been packaged by a party referred to in article 2, 19., a) or imported by a party referred to in article 2, 19., b).

Art. 7.

§ 1. For the implementation of article 6, the party responsible for packaging may either discharge its duty itself or, where appropriate, conclude an agreement with a third party in the form of a public or private organisation for the full or partial fulfilment of the take-back obligation.

In this case it is obliged to inform the Interregional Packaging Commission within six months of the coming into force of the present cooperation agreement of the way in which it is fulfilling its duty or how the third party is ensuring that its individual take-back obligation is being fulfilled.

This information shall be submitted every year before March 31. Any changes to the applied working method shall be mentioned.

As regards household packaging waste, fulfilment of the take-back obligation referred to in subsection 1 is not prejudicial to the powers of the public bodies responsible for the collection of household waste products on the public highways.

§ 2. The Interregional Packaging Commission shall assess the way in which the party responsible for packaging, as referred to in paragraph 1 of this article, fulfils its take-back obligation and approve or reject it as it deems fit. It may request further information at any time.

Art. 8.

Without prejudice to the application of the other provisions of this co-operation agreement, all parties responsible for packaging who do not wish to fulfil the take-back obligation pursuant

to article 7 themselves may entrust an accredited body, as referred to in article 10, with the fulfilment of their take-back obligations.
Retailers responsible for packaging may mandate an authorised natural person or legal entity to represent them to the accredited body.

Parties responsible for packaging are deemed to have fulfilled their take-back obligation if they may show that they have – either directly or through the offices of a natural person or legal entity which is authorised to represent them – concluded an agreement with this accredited body, and that the latter is fufilling the obligations incumbent upon it pursuant to article 12, 2..

Section 2. – Accredited bodies

Subsection 1.- Accreditation of a body

Art.9.

The accreditation of bodies that may be entrusted by a party responsible for packaging with the fulfilment of its obligations arising from Article 6, may only be attributed to legal entities satisfying the following conditions:

1) they must be constituted as a non-profit-making association pursuant to the law of June 27 1921 giving corporate personality to non-profit-making associations and state-approved institutions;
2) their sole object shall be the assumption on behalf of the contracting party of the take-back obligation as required under article 6 of the present agreement;
3) the association's directors, or any parties authorised to undertake binding commitments on its behalf, must be in full possession of their civil and political rights;
4) the association's directors, or any parties authorised to undertake binding commitments on its behalf, may not include any party found guilty of infringing the environmental legislation of the Belgian regions or of a Member State of the European Union.
6) they must possess the necessary means to fulfil the take-back obligation.

Art. 10.

§ 1. The accreditation application must be submitted in ten copies to the Interregional Packaging Commission by registered mail with receipt.

§ 2. The application shall contain the following information:
1) A copy of the articles of association as published in the Belgian official journal, the *Moniteur belge*;
2) A financial plan and a budget for the duration of the accreditation in which, among other things, the following information is mentioned:
- an estimate of the proceeds per kilo of the various products which are generated by the recycling processes;
- the way in which the contributions are calculated and assessed, the level of the contributions which cover the real costs of the obligations of the body applying for the accreditation, as well as, per material, the way in which the collection takes place;

- the conditions and modalities for revising the contributions to reflect changes in the obligations entrusted to the accredited body under application of this cooperation agreement;
- the way in which the proceeds are allocated in favour of the functioning of the system, among other things through the accumulation of reserves;
- an estimate of the costs;
- the financing of possible losses;
3) the geographical area that will be covered;
4) the origin of the waste products;
5) a draft of a 'sample agreement' to be concluded by the accredited body and the party responsible for packaging to account for the take-back obligation;
6) if the accreditation concerns household packaging waste, a model contract concluded in pursuance of the regional waste management plans with the public entities with territorial responsibility for the collecting of household packaging waste. This model contract should determine:
- the modalities for collecting household packaging waste and for dealing with all of the collected waste products;
- the minimum technical conditions per material or per waste type for sorting, for the planning and organisation of collection, and for the sale of sorted materials either by the legal entity in question or via the channels proposed by the accredited body;
- the rules and modalities for the reimbursement of the real and total cost price, including general costs, of the operations carried out by the public organisation(s), including heat recovery and the elimination of the residues from these operations;
- the rules and modalities for the reimbursement of communication costs with regard to the practical modalities for the collecting of waste products;
- the way in which the body intends to safeguard and develop employment in associations or non-profit-making associations whose object is the recycling and recovery of packaging waste;
7) if the accreditation concerns industrial packaging waste, a study with regard to the technical means and infrastructure that will make it possible to achieve, every year of the duration of the demanded accreditation, the targets which are provided for in this agreement and with regard to the way in which the body intends to safeguard and develop employment in associations or non-profit-making associations whose object is the recycling and recovery of packaging waste.

§ 3. The Interregional Packaging Commission will make a decision within six months of receipt of the application.

This deadline will be suspended if the application file is incomplete, if it does not contain all the points which are mentioned in §§ 1 and 2 or if the Interregional Packaging Commission asks for further information, until such time as a registered letter completes the file or the information asked for is provided;

§ 4. The accreditation lays down the conditions which accredited bodies must comply with.

The accreditation has effect for a maximum of five years. Every accreditation decision that provides for a term of less than five years, must be accompanied by an explanation of the reasons for this. The decision shall be published per extract in the *Moniteur belge*.

The accreditation shall only start running when the condition referred to in article 12, 3 has been complied with.

Subsection 2. Financial guarantees to be provided by accredited bodies with regard to household packaging waste

Art. 11.

§ 1. In the accreditation of the accredited body for household packaging waste the level of the financial guarantees shall be fixed by the Interregional Packaging Commission; this level shall correspond to the estimated costs of fulfilment of the take back obligation by the public legal entities during the final year of accreditation.

§ 2. Each financial guarantee should be issued by the Interregional Packaging Commission within 60 working days of the approval of the agreement by the regional administration in favour of each public legal entity with territorial responsibility for the collecting of household waste products. For every public legal entity, an account is opened in the name of the Interregional Packaging Commission.

The financial guarantee may be made by means of a deposit to the account of the deposit and consignment office or by means of a bank guarantee. In any case, the accredited body shall stipulate that the financial guarantee may be fully or partially claimed for at the simple or reasoned request of the Interregional Packaging Commission in the event of the obligations not being fulfilled.

If the financial guarantee consists of a bank guarantee, this guarantee must be issued either by a financial institution that is accredited by the banking and financial commission, or by a government department of a Member State of the European Union that is empowered to supervise financial institutions.

The accredited body is obliged to increase the financial guarantee yearly with the interests yielded during the previous year. If the financial guarantee consists of a bank guarantee, this guarantee shall be raised by the amount equal to the interests which would have been yielded by the amount of the guarantee had it been issued by the deposit and consignment office.

§ 3. In the event of partial or total failure to fulfil the obligations entrusted to the accredited body, the Interregional Packaging Commission may, either at its own initiative or as a result of an administrative sanction, ask for the release of all or part of the financial guarantee to cover the costs incurred by the public legal entities in the fulfilment of the obligations incumbent upon the accredited body.

§ 4. The guarantee shall only be released:
1. if the accredited body has not asked for a renewal at the expiry date of its accreditation.
2. and provided that the Interregional Packaging Commission finds that the accredited body has complied with all the obligations.

Subsection 3. – Obligations of the accredited body

Art. 12.

The accredited body is obliged to:
1. fulfil the conditions of the accreditation;
2. attain the recycling and recovery objectives referred to in article 3, §§ 2 and 3 for all parties responsible for packaging that have concluded an agreement. These targets are expressed as a percentage weight of the total weight of one-way packaging for which their contracting parties are responsible;
3. take out an insurance contract covering the damage that could be caused by its activities;
4. collect in a non-discriminatory way contributions from the contracting parties to cover the real and complete costs of the obligations incumbent upon it in pursuance of the present agreement;
5. submit annually to the Interregional Packaging Commission balance sheets and income and expenditure statements for the previous year and the budget for the following year within the period and in accordance with the format stipulated by the Commission.

Art. 13.

If the take-back obligation concerns household packaging waste, the accredited body is performing a mission of public service and should, besides the obligations laid down in article 12:
1. cover in a homogeneous way the whole of the Belgian territory on which the parties responsible for packaging market their products, so that the collection, recovery and elimination of the waste products that are taken back are guaranteed, or, if the case arises, to submit documentary evidence of an agreement with a third party in this respect;
2. consistently attain, every year during the duration of the applied for accreditation, the targets referred to in article 3, §§ 2 and 3 of the present agreement;
3. serve an equal population percentage in every region;
4. calculate the contribution of the contracting party per packaging material in proportion to:
- the real and complete costs attributable to every material;
the proceeds of the selling of collected and sorted materials; this latter with a view to the financing of the real and complete cost price of:
- existing and future collections according to the modalities fixed by the public legal entity with territorial responsibility for the collection of household waste products;
- operational information and public-awareness campaigns regarding these collections;
- the sorting of collected packaging waste;
- the elimination of the residues from the sorting, recycling and energy recovery of packaging waste as well as possible chain deficit;
5. safeguard and develop employment in associations or non-profit-making associations whose object is the recycling and recovery of packaging waste;
6. comply with the collection modalities fixed by the public legal entities with territorial responsibility for the collection of household waste products;
7. conclude an agreement, under the suspensive condition of the express or tacit agreement of government concerned pursuant to the procedure laid down in § 2 of this article, with any public legal entity with territorial responsibility for household waste products; this agreement shall be in line with the model contract approved by the Interregional Packaging Commission in connection with the accreditation procedure laid down in article 10;
8. supply a guarantee within 60 days of the approval by the regional government, pursuant to § 2 of this article of the agreement referred to in section 7;
9. agree to enter into a contract with any party responsible for packaging who so requests, pursuant to article 10, § 2, 5.;

§ 2. Within ten days of entering into the contract referred to in § 1, 7., the public legal entity shall send a copy of this agreement to the regional government of the area where it is established, as well as to the authorised regional administration and to the Interregional Packaging Commission. The regional government has 60 working days to verify if this agreement is in conformity with the regional waste management plan and the conditions of the accreditation and to approve or reject it. If the regional government has not pronounced upon the agreement at the expiry of the 60-day period, the agreement shall be deemed to be approved.

§ 3. In the event of any dispute between the accredited body and the public legal entity regarding the conclusion and performance of the contract referred to in § 1, the parties concerned shall ask for the mediation of the competent regional administration.

Subsection 4. Supervision of the accredited bodies

Article 14.

In order to obtain any information it may require, the Interregional Packaging Commission may question the auditors of the accredited body. If the accredited body has not appointed any auditors, the Interregional Packaging Commission may have the accounts examined by an auditor appointed by the Commission. This task shall be carried out at the expense of the accredited body.

Article 15.

The government of each region shall have the right to appoint and remove from office one representative at the accredited body for domestic packaging waste, as well as his deputy; these latter shall supervise the public service mission and the obligations imposed by the present agreement.

At their request, the authorised representatives shall be heard by the board of the accredited body. They may at any time question an auditor and inspect all books, correspondence, minutes and in general all documents of the accredited body. They may ask the directors and members of the accredited body for any explanation or information and conduct any checks that seem necessary to them for the carrying-out of their mandates.

Within a period of eight working days, the authorised representatives may lodge an appeal with the Interregional Packaging Commission against any decision of the accredited body with regard to the budget and the fixing of a price scale.

This period shall commence running on the day of the meeting on which the decision has been taken, provided that the representatives were duly invited to this occasion or, if this is not the case, from the day they became aware of the decision. The appeal is suspensive. If the Interregional Packaging Commission has not pronounced on the matter within a period of 30 working days, starting on the same day as the period referred to in part 3, the disputed decision shall be overturned. The Interregional Packaging Commission shall notify the accredited body of its decision.

Section 3. Obligations of the sellers and users

Article 16.

§ 1. Every seller of household packaged goods is obliged to accept, on his own responsibility, in the receptacles provided for this purpose, all transport or grouped packaging that is used as sale packaging and that is returned or left behind by the consumer, insofar as the packaging originates from products that have been marketed by him.

§ 2. For packaging waste of industrial origin and when the party responsible for packaging is that referred to in article 2,19, a) or b), the consumer of packaged goods must:
- either return the packaging waste to the party responsible for packaged goods or to the party that is assigned therefor pursuant to article 7;
- or return the packaging waste to the accredited body which is assigned here for pursuant to article 8;
- or recycle or recover the packaging waste itself, and give proof hereof to the party responsible for packaged goods, either directly or via the seller of packaged goods.

Chapter IV: Information obligation

Section 1 - Information provision obligations with regard to the Interregional Packaging Commission

Article 17.

§ 1. Every year no later than 31 March, the party responsible for packaged goods is obliged to inform the Interregional Packaging Commission per packaging type, of the following information relating to the previous year and to the year in progress, by means of a form designed by the IRPC:
1. The total quantity of marketed transport, grouped and sales packaging, expressed in kilograms, by volume, and by number of units, and categorised into one-way and reusable packaging;
2. the composition of each type of packaging, mentioning the materials used, and, at the minimum, the presence of heavy metals and recycled materials, expressed in weight percentage;
3. the total quantity of packaging waste, per material, that is collected, recycled, recovered and incinerated with or without energy recovery and dumped;
4. the total quantity, in weight and volume, per packaging material, of goods marketed in one-way packaging;
5. the total quantity of packaging, per material, regarded as hazardous because of contamination from the products they contain.

Every region must also provide the information referred to in sections 1 and 3.

§ 2. Every party responsible for packaging may entrust, per sector of economic activity, the information obligations arising from § 1 of this article, to a legal entity. The regional governments may define, on the advice of the Interregional Packaging Commission, the conditions of this delegation.

§ 3. If the party responsible for packaging entrusts an accredited body with the execution of its take-back obligation, this latter shall supply the Interregional Packaging Commission with the information required under § 1, 1, 3 and 4 of this article, for each of its contracting parties.

The accredited body may globally submit the information required under § 1, 3 of this article for all of its contracting parties.

§ 4. The party responsible for packaging or the legal entity acting on its behalf is obliged to provide the Interregional Packaging Commission every year before 31 March and for the first time two years after the implementation of this co-operation agreement, with an assessment of the execution of the general prevention plan referred to in Chapter II of the present co-operation agreement.

§ 5. As regards household packaging waste, the public legal entities with territorial responsibility for collecting household waste products are obliged to inform the Interregional Packaging Commission yearly before 31 March and the first time two years after the implementation of this co-operation agreement of the quantities and proceeds of sale of sorted materials.

Art. 18.

Every year before 31 March and for the first time six months after the implementation of this co-operation agreement, every accredited body is obliged to report the following information to the Interregional Packaging Commission:
1. the complete list of the parties responsible for packaging who have, in application of article 8, concluded an agreement with the accredited body;
2. per packaging waste type and per material of which these waste products are composed, the total weight that has been brought on the market by the contracting parties, the recovery and recycling targets, as well as the quota that have been achieved;
3. the financial means made available by every party responsible for packaging who has, in application of article 8, concluded an agreement with the accredited body;
3. the financial information relevant to the calculation of the contributions.

The data referred to in section 2 shall be supplied split out by region.

Section 2. - Information obligations with regard to the consumer

Art. 19.

Except for the communication regarding the practical modalities of the collection of packaging waste, referred to in articles 10, § 2, 6 and 13, § 1, 4 and 7, all plans for information, public awareness and publicity campaigns must be submitted to the Interregional Packaging Commission for approval. The Interregional Packaging Commission has sixty working days to decide on the proposed actions. If the Interregional Packaging Commission has made no decision at the expiry of the sixty-day period, the proposed actions are deemed to be approved.

The accredited body may on no account be a sponsor.

Art. 20.

The placing on packaging of any logo or text symbolising the accomplishment of the obligations arising from the co-operation agreement is subject to the obtaining, either by the accredited body or, in the event of fulfilment of the take-back obligation not having been entrusted to an accredited body, by the party responsible for packaging, of the Interregional Packaging Commission's approval. The IRPC has sixty working days to decide on the design of the logo or text. If the Interregional Packaging Commission has not pronounced on it at the expiry of this period, the design of the logo or text is deemed to be approved.

Art. 21.

§ 1. The seller, with the exception of the retailer, is obliged to place a notice at the entrance and exit of each of his points of sale, and in a clearly visible location, mentioning:
1. how it is fulfilling the obligation referred to in article 16, § 1;
2. the amounts that are received for every type of packaging that is brought on the market in the point of sale by the party responsible for packaging or the party acting in its place, in order to finance the obligations of this agreement.

§ 2. The party responsible for packaging is obliged to inform every seller who so requests of the financial amounts that are collected for every type of packaging that is marketed by the seller in order to finance the obligations of this agreement.

Chapter V. - The Interregional Packaging Commission and the competent regional administration

Section 1 – The Interregional Packaging Commission

Art. 22.

§ 1. The regions shall establish the Interregional Packaging Commission as a common institution as defined in article 92bis of the Special Act of 8 August 1980 on institutional reforms. The IRPC has a corporate personality.

The IRPC is composed of a decision-making body and a permanent secretariat, whose role is to assist the decision-making body.

The decision-making body is composed of nine members. Each regional government has the right to appoint and revoke the appointment of three full members and three stand-ins to replace the full members in their absence.

The permanent secretariat is composed of civil servants who are placed at the disposal of the IRPC by the regional governments to perform its administrative and technical tasks.

§ 2. The members of the decision-making body and the staff-members of the permanent secretariat provided by the regional governments shall remain subject to the statutory dispositions that are applicable to them.

Art. 23.

The decision-making body of the Interregional Packaging Commission shall meet at least once a month or at the request of a member. A session is only legitimate if the three regions are represented.

The members of the decision-making body of the Commission shall appoint a Chairman from within their number each year on the anniversary of the entry into force of the cooperation agreement. The Chairmanship shall rotate between the Regions. The role of secretary to the decision-making body is fulfilled by a staff member of the permanent secretariat.

All opinions, proposals and decisions of the Commission must be passed unanimously, with at least one representative of each Region present.

Art. 24.

The yearly budget of the Interregional Packaging commission shall be funded by each region in line with the distribution ratios used in article 16bis, § 1 of the Special Act of 16 January 1989 on the financing of the Communities and Regions.

Art. 25.

§ 1. The decision-making body of the Interregional Packaging Commission shall:

1. approve the general prevention plans;
2. approve the way in which the party responsible for packaging who has not charged an accredited body with the carrying out of its take-back obligation fulfils its obligations;
3. give, suspend and withdraw the accreditation of the body and change any time, after having heard the representatives of the accredited body, for reasons of general interest, the conditions for the carrying out of the activity, as laid down in the accreditation;
4. fix the level of every financial security and ask for its release in the event of the obligations described in article 12, § 2, pursuant to article 11 of this agreement, not being fulfilled;
5. approve information, consumer awareness and publicity campaigns planned by the accredited body, with the except of communications relating to the practical modalities of the collecting of packaging waste as referred to in articles 10, § 2, 6 and 13, § 1, 4 and 7.
6. give its consent to the placing of every logo and text on packaging with a view to clarifying the carrying out of the obligations of the present agreement;
7. determine the overall reference figures on the weight of the one-way packaging that is yearly marketed in each region, and the specific reference figures on the weight of the one-way packaging brought on the market by the party responsible for packaging that has made an agreement with an accredited body;
8. establish the organigram and the working rules of the permanent secretariat.

§ 2. The IRPC shall verify:

1.the way in which the parties responsible for packaging or the accredited bodies meet the minimum recovery and recycling targets;

2. the information that has to be reported to it pursuant to articles 17 and 18.

§ 3. The members of the permanent secretariat of the IRPC shall question the auditors of the accredited body or examine the accounts pursuant to article 14, and are charged with the supervision of the dispositions of the co-operation agreement;

§ 4. The IRPC shall draw up an annual report on its activities for the benefit of the Regional Governments.

Art. 26.

The Interregional Packaging Commission shall formulate proposals and/or advice for the regional governments on:
1. its annual budget - every year and for the first time within three months of the implementation of the present co-operation agreement;
2. the implementation of higher recovery and recycling targets for packaging waste as described in article 3, §§ 2 and 3;
3. the implementation, from 1 January 1998, of higher minimum recycling and recovery targets per packaging material as described in article 3, § 3;
4. the imposition of complementary obligations on the parties responsible for packaging and on the accredited bodies with a view to meeting recovery and recycling targets that are higher than the targets determined in article 3, § 2;
5. the exemption from the application field of this co-operation agreement of certain packaging waste for hygienic and safety reasons or because of the specific treatment it requires;
6. the calculation modalities of the recycling quota for beverage packaging as referred to in Chapter II of Book II of the ordinary law of 16 July 1993 on the creation of the federal state structure;
7. the way in which the collection of the contributions and the allocation of funds is carried out by the accredited body;
8. the efficiency of the recovery and recycling channels;
9. the assessment of the amount of the contributions the accredited body asks the contracting parties to pay;
10. the list of packaging waste that is assimilated with domestic packaging waste.

Section 2. - Competent regional administrations

Art. 27.

Each of the competent regional administrations shall:

1. offer to mediate in the event of any dispute between the accredited body and the public legal entity on the making or carrying-out of the agreement described in article 13, § 1, 7;
2. advise the Interregional Packaging Commission on the efficiency of the recovery and recycling channels;
3. advise the Interregional Packaging Commission on the conformity of the planning of the geographical zones covered by the accredited body, to the regional plan for waste products.

CHAPTER VI. – Supervision and administrative sanctions

Section 1. - Supervision

Art. 28. § 1. Without prejudice to the scope of activities of the officers of the judicial police (criminal investigation department), the members of the permanent secretariat of the Co-operation agreement Interregional Packaging Commission, as well as the civil servants of each authorised regional administration that are designated by the governments, are charged with the supervision of the provisions of this co-operation agreement. Their reports are admissible as evidence until the evidence to the contrary is provided.

§ 2. Every party responsible for packaging, every seller and every accredited body is obliged to produce, at the request of the parties referred to in the first section, all documents and correspondence and to submit orally or in writing information on the execution of their obligations by virtue of this co-operation agreement.

When these documents and correspondence are held, drawn up, issued, received or saved by means of a computer system, the parties mentioned in section one have the right to have the information placed on data carriers transmitted in a readable and understandable way for inspection. The parties mentioned in section one may also request the party mentioned in this context to make copies of all or a part of the aforementioned data, in their presence and using its own equipment, in whatever form they request, as well as to process computer adaptations that are considered necessary for the supervision of the compliance with the obligations of this co-operation agreement.

§ 3. Every party responsible for packaging, seller and accredited body is, at any time and without prior notice, obliged to give free access to the premises where its activities take place, in order to enable the parties mentioned in section 1 to supervise compliance with the obligations of the present co-operation agreement.

Premises where the activities take place are held to include, among others, offices, factories, workshops, shops, garages and grounds that are used as factories, workshops or warehouses.

Section 2 – Suspension and withdrawal of accreditation

Art. 29.

In the event of any of the obligations mentioned in articles 12 or 13 not being fulfilled, the Interregional Packaging Commission may address a warning to the accredited body by registered letter.

The Interregional Packaging Commission may proceed to suspension or temporary or final withdrawal of the accreditation if:
1. an unsatisfactory response is given to a first warning:
2. the recycling and recovery percentages the accredited body is obliged to meet have not been achieved;
3. the accredited body has not fulfilled its information obligation;
4. the accredited body no longer satisfies the conditions of accreditation;
5. infringements of the environmental regulations are discovered;
The accreditation may only be suspended or withdrawn insofar as the representative(s) of the

accredited body have first been heard by the Interregional Packaging Commission.

Section 3 – Administrative fines

Art. 30.

§ 1. In the event of a party mentioned in article 14 failing to present its general prevention plan within the required period or repeatedly submitting a plan that is considered unsatisfactory by the Interregional Packaging Commission, the members of the permanent secretariat of the IRPC may impose on it, pursuant to the regulations mentioned in article 31, an administrative fine of € 250 for each plan not submitted or considered unsatisfactory on more than one occasion.

§ 2. In the event of a party responsible for packaging or an accredited body failing to meet, within the required period, the targets expressed in tonnes a year pursuant to articles 6 or 12, the members of the permanent secretariat may, on the basis of the information available to the Interregional Packaging Commission and the authorised regional administrations, pursuant to the regulations fixed in article 31, impose administrative fines of:

1. € 500 for each tonne of packaging waste that was not recovered within the prescribed period;
or
2. € 750 for each tonne of packaging waste that was not recycled within the described period.

§ 3. In the event of the seller or the consumer failing to fulfil his obligations ensuing from article 16, the members of the permanent secretariat may, pursuant to the regulations outlined in article 31, impose an administrative fine which may not exceed € 12.500.

Art. 31.

The administrative fines referred to in article 30 are fixed pursuant to articles 2 to 10 and 12 ter to 13 of the law of 30 June 1971 on administrative fines applicable in case of the infringement of certain social laws, taking the following rules into account:

a) for the application of articles 2, 3, 6 to 8 and 13 of the above-mentioned law, “employer” shall mean the party responsible for packaging, the seller or the consumer mentioned in article 16, or the accredited body;

b) for the application of articles 5, 7 and 13 of the above-mentioned law, “work auditor” shall mean the public prosecutor;

c) the civil servant referred to in articles 4, 6 and 10 of the above-mentioned law shall mean the member(s) of the permanent secretariat of the Interregional Packaging Commission;

d) for the application the articles 8 and 9 of the above-mentioned law, “Industrial Tribunal” shall mean the civil court;

e) for the application of article 12ter of the above-mentioned law, “article 1bis” shall mean article 30 of this co-operation agreement.

§ 2. The administrative fine must be paid within a period of three months starting from the day of the notification of the decision imposing the administrative fine. The administrative fine shall be paid by deposit or transfer to the account of the Interregional Packaging Commission, mentioning the decision imposing the administrative fine.

§ 3. The Interregional Packaging Commission is entitled to the revenue from administrative fines.

Art. 32.

Any party responsible for packaging, seller or consumer referred to in article 16, or any accredited body that contests the decision of the authorised civil servant, may launch an appeal at the civil court by means of a petition pursuant to article 8 of the law of 30 June 1971 on the applicable administrative fines in the case of infringement of certain social laws. The appeal shall not suspend the execution of the decision.

Art. 33.

Anyone who is obliged to draw up a general prevention plan and fails to comply with the obligations of article 4 of this co-operation agreement shall be punished with a one week to two months prison sentence and with a € 100 to 5000 fine or with one of these punishments only.

Anyone failing to comply with the obligations of articles 6, 12, § 1 of this co-operation agreement shall be punished with a prison sentence of one month to one year and a € 1,000 to 2,000,000 fine or with one of these punishments only.

Any seller or consumer who fails to comply with the obligations of article 16 of this cooperation agreement shall be punished with a prison sentence of one week to six months and with a € 100 to 5,000 fine or with one of these punishments only.

Anyone who is obliged to provide information pursuant to articles 7, 17 and 18 and fails to comply with his obligations shall be punished with a prison sentence of one week to one month or with a € 100 to 5, 000 fine or with one of these punishments only.

Anyone who in any way obstructs the supervision referred to in the co-operation agreement shall be punished with a prison sentence of one month to one year and with a € 100 to 1,000,000 fine or with one of these punishments only.

Art. 34.

Natural persons and private legal entities bear civil liability to pay any fines and costs, including the legal costs of judgements against their officers, directors, representatives, liquidators or proxies.

CHAPTER VIII. – Final clauses

Art. 35.

In order to settle any disputes with regard to the interpretation and execution of the present co-operation agreement, a co-operation court shall be set up composed of one representative of each region appointed by their respective governments.

The operating costs of the co-operation court shall be borne by each of the regional governments in line with the distribution ratios used in article 16bis, § 1 of the special act of 8 August 1980 on the financing of the Communities and Regions.

The procedure for this law court is followed pursuant to the dispositions described in the law of 23 January 1989 on the law court referred to in article 16bis, §§ 5 and 6, and article 94, § 3, of the special act of 8 August 1980 on the reform of the institutions.

Art. 36.

The co-operation agreement shall come into force on the day of its publication in the *Moniteur belge*.

Parties responsible for industrial packaging waste shall only be subject to the take-back obligation referred to in article 6 one year after the coming into force of the present cooperation agreement.

Retailers responsible for packaging shall only be subject to the take-back obligation referred to in article 6 and the information obligation referred to in article 17 three years after the coming into force of the present co-operation agreement.

Brussels, 30 May 1996.

The Minister for the Environment and Water Policy, and for the Urban Renewal, Natural Conservation and Public Hygiene of the Brussels Capital Region,
D. COSUIN

The Flemish minister of Environment and Employment,
Th. KELCHTERMANS

The Walloon Minister for the Environment, Natural Resources and Agriculture,
G.LUTGEN

The Minister President of the Government of the Brussels Capital Region, responsible for Local Authorities, Employment, Housing and Monuments and Sites,
Ch. PICQUE

The Minister President of the Flemish government and Flemish Minister for Foreign Policy, European Affairs, Science and Technology,
L. VAN DEN BRANDE

The Minister President of the Walloon government, responsible for the Economy, Foreign

Trade, Small and Medium-Sized Enterprises, Tourism and the Heritage,
R. COLLIGNON