

COOPERATION AGREEMENT OF 04-11-2008 ON THE PREVENTION AND MANAGEMENT OF PACKAGING WASTE

Having regard to the special law of 8 August 1980 on institutional reform, as amended by the special laws of 8 August 1988 and of 16 July 1993 and, in particular, to article 6(1)(II)(2) and article 92a(1);

Having regard to the decree of the Flemish Council of 2 July 1981 on waste prevention and management, the decree of the Walloon Regional Council of 27 June 1996 on waste and the order of the Council of the Brussels-Capital Region of 7 March 1991 on waste prevention and management;

Whereas this Cooperation Agreement replaces the Cooperation Agreement of 30 May 1996 on the prevention and management of packaging waste, with the aim, in particular, of meeting the requirements of Directive 2004/12/EC, namely to further clarify the definition of the term “packaging” and to raise packaging waste recycling and recovery targets;

Whereas packaging waste constitutes a significant proportion of the waste generated in Belgium, whereas it is essential for all parties involved in the production, use, import and distribution of packaged goods to become more aware of the significance of packaging in generating waste, and whereas these parties assume responsibility for such waste according to the “polluter pays principle”;

Whereas the municipality/intermunicipality (or municipalities/intermunicipalities) to whom companies responsible for household packaging waste entrust their take-back (i.e. recycling and recovery) obligation fulfils (or fulfil) a public service mission, under the supervision of the authorities;

Whereas, in accordance with the waste policies of the European Union and the Belgian regions, the top priority for the management of packaging waste is the prevention of packaging waste, together with the following additional fundamental principles: the re-use of packaging, recycling and other forms of recovering packaging waste and thereby the reduction of the final disposal of such waste;

Whereas it is essential for joint measures on the prevention and management of packaging waste to be taken in the Brussels-Capital Region, the Flemish Region and the Walloon Region in order to, on the one hand, prevent or reduce the environmental impact of such waste, thus ensuring a high level of environmental protection, without, on the other hand, disrupting the general legal framework of the economic union and of the Belgian monetary unit;

Whereas only a legally binding Cooperation Agreement offers a sufficient guarantee of implementing uniform rules in the whole of Belgium.

CHAPTER I – GENERAL PROVISIONS

Article 1

1. This Cooperation Agreement is a partial transposition into national law of Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste, as amended by Directive 2004/12/EC of the European Parliament and of the Council of 11 February 2004.

This Cooperation Agreement is a partial transposition into national law of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste.

2. This Cooperation Agreement shall be directly applicable in the Brussels-Capital Region, the Flemish Region and the Walloon Region.

Unless otherwise stipulated, this Cooperation Agreement shall not prejudice existing regional legislation on waste prevention and management.

This Cooperation Agreement shall not prejudice the powers of local or municipal authorities with regard to public health and safety on public highways.

This Cooperation Agreement shall be applicable to the disposal and treatment of both household and industrial/commercial packaging waste, without, however, precluding the possibility for municipalities and the Brussels municipal authorities to issue, within the scope of their powers, additional regulations on the collection of packaging waste.

Article 2

For the purposes of this Cooperation Agreement:

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 the consumer. "Disposable" ("non-returnable") items used for the same purposes shall also be considered to constitute packaging.

Packaging consists only of:

- a) sales packaging or primary packaging;
- b) grouped packaging or secondary packaging;
- c) transport packaging or tertiary packaging.

The definition of "packaging" shall be further based on the criteria set out below:

(i) Items shall be considered to be packaging if they fulfil the abovementioned definition without prejudice to other functions which the packaging might also perform, unless the item is an integral part of a product and it is necessary to contain, support or preserve that product throughout its lifetime and all elements are intended to be used, consumed or disposed of together.

(ii) Items designed and intended to be filled at the point of sale (POS) and "disposable" items sold, filled or designed and intended to be filled at the POS shall be considered to be packaging provided they fulfil a packaging function.

(iii) Packaging components and ancillary elements integrated into packaging shall be considered to be part of the packaging into which they are integrated. Ancillary elements hung directly on, or attached to, a product and which perform a packaging function shall be considered to be packaging unless they are an integral part of this product and all elements are intended to be consumed or disposed of together;

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 POS;

3. "Grouped packaging or secondary packaging" shall mean packaging conceived so as to constitute, at the POS, 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 POS; it can be removed from the product without affecting its characteristics;

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

5. "Service packaging" shall mean any kind of primary, secondary or tertiary packaging that is used at the POS of goods or services to consumers, as well as any kind of packaging that is of the same type and is used in the same way;

6. "Packaging waste" shall mean any packaging or packaging material covered, under the applicable Belgian regional legislation, by the definition of waste, excluding production residues;

7. "Household packaging waste" shall mean packaging waste originating from normal household activities and packaging waste that, under the applicable Belgian regional legislation, is equivalent or comparable therewith;

8. "Industrial and commercial packaging waste" shall mean any packaging waste that cannot be regarded as household packaging waste;

9. "Reusable packaging" shall mean any packaging conceived and designed to accomplish within its life cycle 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 re-use;

10. "One-way packaging" shall mean any packaging that is not reusable packaging within the meaning of point 9;

11. "Packaging material" shall mean simple or composite material of natural or artificial origin of which packaging consists;

12. "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, recovery and disposal stages, in particular by developing "clean" products and technology;

13. "Recovery" shall mean any operation that is covered by the definition of "recovery" in the applicable Belgian regional legislation;

14. "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;

15. "Recycling" shall mean the reprocessing in a production process of waste materials whether for the original purpose or for other purposes, including organic recycling but excluding energy recovery;

16. "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;

17. "Disposal" shall mean any operation that is covered by the definition of "disposal" in the applicable Belgian regional legislation;

18. "Collection" shall mean the gathering and sorting, with or without mixing, of waste;

19. "Take-back obligation" shall mean the obligation imposed on responsible companies to meet, in the light of the objectives of this Cooperation Agreement, the recovery and recycling quotas referred to in article 3(2) and (3) of said Agreement;

20. "Responsible company", i.e. the party responsible for packaging, shall mean:

- a) any party that packages or has goods packaged in Belgium with a view to or as a result of placing them on the Belgian market;
- b) where products placed on the Belgian market have not been packaged in Belgium, any party importing the packaged goods (or that has them imported) and that does not unpack them or use them itself;
- c) with regard to industrial and commercial packaging waste arising from products that do not come under a) or b), any party that unpacks or uses the packaged goods in Belgium and is thereby deemed responsible for the packaging waste generated;
- d) with regard to service packaging, contrary to the above, any party that produces service packaging in Belgium with a view to placing it on the Belgian market, and any party that, where the service packaging is not produced in Belgium, has imported it with a view to placing it on the Belgian market, or any party that imports the service packaging and places it on the Belgian market itself, whether or not they are retailers;

21. "Seller" shall mean any party that presents packaged goods with a view to selling to consumers in Belgium;

22. "Retailer" shall mean the legal entity selling products and goods to the public at one or more points of sale, the combined selling or consumption area of which is less than or equal to 200 m²;

23. "Accredited compliance organisation" shall mean the legal entity accredited in accordance with articles 9 and 10 of this Cooperation Agreement that undertakes the take-back obligation incumbent on responsible companies;

24. "Interregional Packaging Commission" shall mean the Commission referred to in article 23 of this Cooperation Agreement, responsible for certain administrative, supervisory and advisory tasks within the scope thereof;

25. "Competent regional administration" shall mean the *Openbare Vlaamse Afvalstoffenmaatschappij* (OVAM – Public Waste Agency of Flanders) for the Flemish Region, the *Office wallon des déchets du Ministère de la Région wallonne* (Walloon Waste Authority) for the Walloon Region and *Bruxelles Environnement* (IBGE – Brussels Institute for Environmental Management) for the Brussels-Capital Region;

26. "Regional waste plan" shall mean the plan or plans adopted in accordance with regional legislation;

27. "Industrial unpacker" shall mean any party, whether it be the responsible company or not, that removes the packaging from a product intended for an industrial or commercial activity and thereby becomes a holder of industrial and commercial packaging waste.

Article 3

1. This Cooperation Agreement shall apply to all transport, grouped or sales packaging and packaging waste and has, within the limits and under the terms and conditions thereof, the following objectives:

- 1) to prevent or reduce the production or the harmfulness of packaging waste;
- 2) to guarantee that the proportion of packaging that can be re-used for the same marketed goods does not fall in comparison with the previous year and that the total weight of one-way packaging for the same marketed goods is reduced in comparison with the previous year;
- 3) to encourage re-use, promote and require recovery, in particular recycling, and reduce the proportion of packaging waste in non-selective collection systems;

4) to oblige responsible companies, by introducing a take-back obligation, to bear the full cost of collecting, recovering and disposing of packaging waste and, in the case of household packaging waste, to contribute towards the costs associated therewith, as referred to in article 13(1)(12);

5) to impose and organise a reporting obligation on responsible companies and any other parties involved in producing and marketing packaged goods or in taking back packaging waste.

2. The minimum overall targets, expressed in terms of percentage by weight relative to the total weight of one-way packaging placed on the Belgian market, shall be as follows for household packaging waste:

- as from calendar year 2009:
 - recycling: 80%;
 - recovery, plus “incineration at waste incineration plants with energy recovery”: 90%.

The minimum overall targets, expressed in terms of percentage by weight relative to the total weight of one-way packaging material placed on the Belgian market, are as follows for industrial and commercial packaging waste:

- as from calendar year 2009:
 - recycling: 75%;
 - recovery, plus “incineration at waste incineration plants with energy recovery”: 80%.
- as from calendar year 2010:
 - recycling: 80%;
 - recovery, plus “incineration at waste incineration plants with energy recovery”: 85%.

The above-mentioned target percentages shall be calculated according to the procedures determined by the Interregional Packaging Commission, in accordance with European law. They have to be reached for the whole of Belgium.

3. As from the calendar year following the entry into force of this Cooperation Agreement, the following minimum recycling targets also have to be reached for the whole of Belgium for the various packaging materials:

- 60% by weight for glass;
- 60% by weight for paper/cardboard;
- 60% by weight for drink cartons;
- 50% by weight for metals;
- 30% by weight for plastics, only including materials recycled in the form of plastics;
- 15% by weight for wood.

The target recycling percentages listed above shall be calculated according to the procedures determined by the Interregional Packaging Commission, in accordance with European law. They have to be reached for the whole of Belgium.

Article 4

1. Every three years, by 30 June at the latest, any company that is responsible for at least 300 tonnes of one-way packaging per year and any company that is responsible, within the meaning of article 2(20)(a), for at least 100 tonnes of one-way packaging per year shall be required to submit a packaging prevention plan to the Interregional Packaging Commission.

To determine the quantity of packaging/year for which any party is responsible, the base (reference) year shall be defined and notified by the Interregional Packaging Commission for each packaging prevention plan.

Without prejudice to the content of the action plan referred to in article 22, the packaging prevention plan shall include the prevention measures completed during the previous year by the responsible company, those that are ongoing and those that are planned for the term of the prevention plan, in accordance with the regional waste plans. It shall describe, for the packaging for which the company is responsible, at least the measures planned and the targets relating to reducing the amount of packaging waste created and to reducing the harmfulness of this packaging waste to humans and the environment and also, for household packaging waste, relating to the amount of packaging waste that is not selectively collected, the management costs of which are not borne by the responsible companies.

The responsible companies may, in their packaging prevention plan, differentiate between the planned measures and targets that relate to packaging waste for which they are responsible within the meaning of article 2(20)(a), those that relate to packaging waste for which they are responsible within the meaning of article 2(20)(b), those that relate to packaging waste for which they are responsible within the meaning of article 2(20)(c) and, finally, those that relate to packaging waste for which they are responsible within the meaning of article 2(20)(d).

2. In each sector of economic activity, the responsible company referred to in paragraph 1 may, by agreement, entrust the obligations arising from this article to a third-party legal entity, which substitutes for the responsible company. This legal entity shall comply with any request for information made by the Interregional Packaging Commission.

The responsible company shall inform the legal entity of its intention to transfer this responsibility to said legal entity, no later than 12 months before the deadline for submitting the prevention plan. Within two months thereof, the legal entity shall notify the responsible companies concerned and the Interregional Packaging Commission of its intention to submit (or not submit) a prevention plan within the meaning of this paragraph.

The prevention plan submitted by the aforementioned legal entity must meet the guidelines issued to the legal entity by the Interregional Packaging Commission. The latter may also specify the sectors and subsectors for which the prevention plan must make provisions.

3. Within the scope of the regional powers and in close consultation with the Belgian regions and the industry, the Interregional Packaging Commission shall take the necessary steps to promote and raise awareness of prevention within companies, in order to underpin the policy and measures taken in the field of prevention.

Article 5

1. The Interregional Packaging Commission shall assess all packaging prevention plans and approve or reject them.

In the event of rejection, the prevention plan must be resubmitted within the deadline set by the Interregional Packaging Commission, taking into account the latter's comments.

2. Each packaging prevention plan shall be assessed against general requirements, which are defined and communicated by the Interregional Packaging Commission through standard forms. For each responsible company that is required to submit a packaging prevention plan, said requirements shall take into account previous prevention measures, the reasonably acceptable restrictive circumstances and the fact that the company is the party responsible for the packaging concerned, within the meaning of article 2(20)(a), (b), (c) or (d). The general requirements shall have two overall objectives:

- to reduce the quantity of packaging waste that will be created, and
- to reduce the harmfulness of this packaging waste to humans and the environment.

CHAPTER III – MANAGEMENT OF PACKAGING WASTE

Section 1 – Take-back obligation for responsible companies

Article 6

All responsible companies that place at least 300 kg of packaging on the market per year shall be subject to a take-back obligation.

If the responsible company is the party referred to in article 2(20)(a), (b) or (d), the targets referred to in article 3(2) and (3) shall be expressed as percentages by weight relative to the total weight of one-way packaging that has been placed on the market by the responsible company during the calendar year.

If the responsible company is the party referred to in article 2(20)(c), the targets referred to in article 3(2) and (3) shall be expressed as percentages by weight relative to the total weight of one-way packaging originating from goods used or unpacked by the responsible company during the calendar year, which were not packaged by a party referred to in article 2(20)(a) or (d) and which were not imported by a party referred to in article 2(20)(b) or (d).

Article 7

1. To comply with article 6, the responsible company may either discharge the take-back obligation itself or, where appropriate, contract a third-party legal entity to fulfil all or part of its take-back obligation.

In this case, the responsible company shall be required to inform the Interregional Packaging Commission of the way in which it is fulfilling its take-back obligation or how the third party with which it has contracted is ensuring that its individual take-back obligation is being fulfilled.

This information shall be submitted each year before 31 March and shall indicate, where appropriate, any changes to the working method used.

With regard to household packaging waste, fulfilment of the take-back obligation referred to in paragraph 1 shall be without prejudice to the powers of the municipality or intermunicipality responsible for collecting household waste on public highways.

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

Article 8

Without prejudice to the application of other provisions of this Cooperation Agreement, any responsible company that does not wish to fulfil the take-back obligation pursuant to article 7 itself may appoint an accredited compliance organisation, as referred to in article 10, to carry out its take-back obligation.

The Interregional Packaging Commission may authorise, in a non-discriminatory way, certain responsible companies, and retailers in particular, to be represented within the accredited compliance organisation. The Interregional Packaging Commission may lay down the procedures for this representation.

Responsible companies are deemed to have fulfilled their take-back obligation if they – either directly or through the offices of a legal entity that is authorised to represent them – have contracted with the accredited compliance organisation and provided the latter is fulfilling the obligations incumbent on it under article 12(2) or – in cases of non-fulfilment – if the responsible company pleads demonstrable *force majeure*.

Section 2 – Accredited compliance organisations

Subsection 1 – Accreditation of an organisation

Article 9

The accreditation of an organisation that may be appointed by responsible companies to fulfil their obligations arising from article 6 may only be granted to a legal entity satisfying the following conditions:

- 1) it must be constituted as a non-profit association pursuant to the law of 27 June 1921 on non-profit associations, international non-profit associations and foundations;
- 2) its sole object, as identified in its articles of association, shall be the assumption, on behalf of its contracting parties, of the take-back obligation as required under article 6 of this 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 convicted of infringing the environmental legislation of the Belgian regions or of a Member State of the European Union;
- 5) it must have sufficient resources to fulfil the take-back obligation.

Article 10

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

2. The application shall contain the following information:

- 1) a copy of the articles of association as published in the Belgian Official Gazette;
- 2) a financial plan and a budget for the duration of the accreditation in which, inter alia, the following information is mentioned:
 - estimated revenue from the various recycling streams;
 - the way in which the contributions shall be calculated and assessed, the total amount of the contributions that cover the full cost of the obligations incumbent on the organisation applying for accreditation, and the collection methods for each material;
 - the conditions and procedures for revising the contributions to reflect changes in the obligations incumbent on the accredited compliance organisation under this Cooperation Agreement;

- methods for allocating revenue for operating the system, in particular by creating possible reserves;
 - estimated expenditure;
 - financing of possible losses;
- 3) the geographical area that will be covered;
 - 4) the type of waste concerned;
 - 5) a draft of a standard contract to be concluded between the accredited compliance organisation and the responsible company (or companies) in order to assume the take-back obligation;
 - 6) if the accreditation concerns household packaging waste:
 - a standard contract concluded in pursuance of the regional waste plans with the municipality or intermunicipality locally responsible for collecting household waste. This standard contract should prescribe:
 - o the procedures for collecting household packaging waste and for dealing with all of the packaging waste collected;
 - o the minimum technical requirements 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 municipality or intermunicipality in question or by the accredited compliance organisation;
 - o the conditions and procedures for the payment of the full cost, including general overheads, of the operations carried out by or on behalf of the municipality or intermunicipality, including energy recovery and disposal of the residues from these operations;
 - o the rules and procedures for the payment of communication costs relating to the practical procedures for collecting packaging waste;
 - o the way in which the accredited compliance organisation intends to safeguard and create employment in social purpose associations or companies that, in accordance with their social aims, are involved in collecting, sorting, recycling and recovering packaging waste, without prejudice to the third subparagraph of article 1(2);
 - o the way in which the selective collection, sorting and recycling markets are organised;
 - an estimate, for the duration of the accreditation, of the average cost per tonne of non-selective collection and of incineration with energy recovery;
 - where appropriate, if the accredited compliance organisation proposes to conclude agreements with the Belgian regions under the last subparagraph of article 13(1)(12), the draft agreements and their respective budgets;
 - 7) if the accreditation concerns industrial and commercial packaging waste:
 - a study on the technical means and infrastructure that will make it possible to achieve, every year for the duration of the requested accreditation, the targets provided for in this Agreement;

- a conclusive description of how the accredited compliance organisation intends to defray the costs of selective collection, recycling, recovery and “incineration at waste incineration plants with energy recovery” of industrial unpackers;
- a conclusive description of how the accredited compliance organisation intends to encourage a maximum number of industrial unpackers to adopt selective collection, recycling and recovery;
- an action plan to tackle the issue of packaging waste at small businesses, particularly SMEs and retailers;
- a conclusive description of how the accredited compliance organisation intends to minimise possible disruption to the free market of selective collection, recycling and recovery;
- a conclusive description of how the accredited compliance organisation shall ensure that recycled and recovered industrial and commercial packaging waste can be verified and monitored;
- the draft contracts that the accredited compliance organisation wishes to conclude with public and private operators, with a view to fulfilling the take-back obligation.

3. The Interregional Packaging Commission shall decide on applications within six months of receiving them. Within three months of receipt, the Interregional Packaging Commission shall decide on the admissibility of applications and, if admissible, whether they are complete.

If an application is incomplete, if it does not contain all the items mentioned in paragraph 2 or if the Interregional Packaging Commission asks for further information, this deadline shall be suspended until such time as the application is completed or the requested information is provided, by registered letter with acknowledgement of receipt.

4. The accreditation shall lay down the conditions with which accredited compliance organisations must comply.

The accreditation shall have effect for a maximum of five years. Any accreditation decision that provides for a term of less than five years must be substantiated. All final decisions shall be published, in full, in the Belgian Official Gazette.

The accreditation shall not commence until the obligation referred to in article 12(3) has been met.

Subsection 2 – Financial guarantees to be provided by accredited compliance organisations with regard to household packaging waste

Article 11

1. In the accreditation granted to the accredited compliance organisation for household packaging waste, the Interregional Packaging Commission shall set the amount of the financial guarantees, which shall correspond to the estimated costs of fulfilling the take-back obligation, by the municipality or intermunicipality, over a nine-month period.

2. Each financial guarantee should be lodged with the Interregional Packaging Commission within 60 working days of concluding the contract referred to in article 13(2), in favour of each municipality or intermunicipality locally responsible for collecting household waste. An account shall be opened in the name of the Interregional Packaging Commission for each municipality or intermunicipality.

The financial guarantee may be provided by means of either a deposit into the account of the “Caisse des dépôts et consignations” (Deposit and Consignment Office) or a bank guarantee. In both cases, the accredited compliance organisation shall stipulate that the financial guarantee is fully or partially exigible at the simple, reasoned request of the Interregional Packaging Commission in the event of failure to fulfil the obligations.

If the financial guarantee consists of a bank guarantee, this guarantee must be issued by a credit institution that is accredited either by the Banking, Finance and Insurance Commission, or by an EU Member State authority that is empowered to oversee credit institutions.

3. In the event of partial or total failure to fulfil the obligations entrusted to the accredited compliance organisation, the Interregional Packaging Commission may, either on its own initiative or as a result of an administrative penalty, request that all or part of the financial guarantee be released to cover the costs incurred by the municipalities or intermunicipalities in the fulfilment of the obligations incumbent on the accredited compliance organisation.

Before requesting the release of all or part of the financial guarantee, the Interregional Packaging Commission shall issue a warning to the accredited compliance organisation by registered letter. This warning shall explicitly state the obligations that the accredited compliance organisation has failed to fulfil, the specific measures to be taken by the accredited compliance organisation and the deadline for doing so. This deadline shall be at least 15 calendar days.

The Interregional Packaging Commission shall hold a hearing with the accredited compliance organisation if the latter so requests. Prior to the hearing, the accredited compliance organisation shall submit, in writing, to the Interregional Packaging Commission, all arguments that it deems useful to its defence. The request for a hearing shall not suspend legal action.

4. The financial guarantee shall be returned:

- 1) if the accredited compliance organisation has not asked for a renewal by the expiry date of its accreditation; and
- 2) provided that the Interregional Packaging Commission is satisfied that the accredited compliance organisation has complied with all of its obligations.

Subsection 3 – Obligations incumbent on the accredited compliance organisation

Article 12

The accredited compliance organisation shall be required to:

- 1) meet the conditions of its accreditation;
- 2) attain the targets referred to in article 3(2) and (3) for all responsible companies having contracted with it;
- 3) take out insurance covering any damage that may be caused by its activities;
- 4) collect, in a non-discriminatory way, the respective contributions from its contracting parties to cover the full cost of the obligations incumbent on it under this Agreement;
- 5) submit annually, to the Interregional Packaging Commission, its balance sheets and profit and loss accounts for the previous year and the budget for the following year, within the deadline and in the format stipulated by the said Commission;
- 6) adapt the standard contracts included in the accreditation application to reflect the terms and conditions of the granted accreditation, within the deadline specified in the accreditation;
- 7) promote the selective collection of packaging waste.

Article 13.

1. If the take-back obligation relates to household packaging waste, the accredited compliance organisation is performing a public service mission and must, in addition to the obligations laid down in article 12:

- 1) uniformly cover the whole of the Belgian territory in which responsible companies market their products, in order to ensure the collection, recovery and disposal of the waste that is taken back, or, where appropriate, submit documentary evidence of an agreement with a third party in this respect;
- 2) consistently attain each year the targets specified in article 3(2) and (3) of this Agreement;
- 3) serve a similar percentage of the population in every Belgian region;
- 4) calculate the contributions of its contracting parties per packaging material in proportion to:
 - the full cost attributable to each material;
 - the revenue arising from the sale of collected and sorted materials;
 - the extent to which each material serves to attain the objectives of the take-back obligation;

with a view to financing the full cost of:

- existing selective collections and those to be created according to the procedures determined by the municipality or intermunicipality locally responsible for collecting household waste;
- selective collection of a household packaging waste stream by a regional agency;
- recycling and recovery, including any shortfall in these areas;

- operational information and public-awareness campaigns regarding these collections;
- sorting the packaging waste collected;
- disposing of residues from sorting, recycling and recovering packaging waste;

and in order to contribute towards financing the policy of the Belgian regions pursuant to point (12) below.

- 5) safeguard and create employment in social purpose associations or companies that, in accordance with their social aims, are involved in collecting, sorting, recycling and recovering packaging waste, without prejudice to the third subparagraph of article 1(2);
- 6) comply with the collection procedures determined by the municipalities or intermunicipalities locally responsible for collecting household waste;
- 7) conclude a contract with each municipality or intermunicipality locally responsible for collecting household waste; this contract shall be in line with the standard contract approved by the Interregional Packaging Commission under the accreditation procedure provided for in article 10;
- 8) conclude a contract with each regional agency that is itself responsible for the selective collection of a household packaging waste stream, as per the conditions laid down by the Interregional Packaging Commission under the accreditation procedure provided for in article 10;
- 9) provide a financial guarantee within 60 working days of concluding the contract referred to under (7);
- 10) agree to enter into a contract, in accordance with article 10(2)(5), with any responsible company subject to the take-back obligation requesting this;
- 11) ensure the quality of the quantities collected and sorted, in order to facilitate recycling;
- 12) contribute towards financing the policy of the Belgian regions on the prevention and management of packaging waste.

The contribution shall be expressed as 50 eurocents per capita per year, the number of inhabitants being determined from the most recent population statistics of the Directorate-General for Statistics and Economic Information of the Federal Public Service for the Economy, SMEs, the Self-Employed and Energy, which are available on 1 January of each year.

This figure of 50 eurocents per capita shall be amended annually in line with the consumer price index, using the mean consumer price index for the months of January through to December 2008 as the base index, and 2004 as the baseline.

The indexed figure shall be rounded up or down to the nearest eurocent, depending on whether the figure of the tenth part of a eurocent has reached 5 or not. The Interregional Packaging Commission shall publish, in the Belgian Official Gazette, the amount of the contribution, as adjusted in accordance with this provision.

The policy of the Belgian regions on the prevention and management of packaging waste may relate, *inter alia*, to:

- o preventing packaging waste;
- o combating packaging found in litter;
- o research & development to improve the quality of packaging, particularly its recyclability;
- o improving the quantity and/or the quality of selective collections;
- o the non-selective collection and treatment of packaging waste.

The total amount of the financing shall be apportioned among the Belgian regions according to the most recent population statistics of the Directorate-General for Statistics and Economic Information of the Federal Public Service for the Economy, SMEs, the Self-Employed and Energy, which are available on 1 January of the year in which the reporting period falls.

The Belgian region concerned shall determine the use to which the contribution will be put, after consulting with the accredited compliance organisation for household packaging waste.

If appropriate, the contribution towards financing the policy of the Belgian regions may be implemented by means of an agreement between the region concerned and the accredited compliance organisation. This agreement shall comply with the provisions of the accreditation procedure provided for in article 10 as well as, where appropriate, with the relevant applicable regional legislation.

- 13) ensure that the recycling and recovery of household packaging waste, and the environmental and social conditions under which recycling and recovery take place, can be verified and monitored.
2. Within ten days of entering into the contract referred to in paragraph 1(7), the accredited compliance organisation shall send an unabridged copy thereof to the competent regional administration and to the Interregional Packaging Commission.
3. In the event of any dispute between the accredited compliance organisation and the municipality or intermunicipality regarding the conclusion and performance of the contract referred to in paragraph 1, the parties concerned shall ask the competent regional administration to mediate. An observer from the Interregional Packaging Commission shall be invited to attend this mediation. If the mediation attempt meets with failure, the competent regional administration shall inform its regional government accordingly.

Article 14

If the take-back obligation relates to industrial and commercial packaging waste, the accredited compliance organisation must, in addition to the obligations laid down in article 12:

- 1) uniformly cover the whole of the Belgian territory in which the responsible companies market their products, in order to ensure the collection, recycling and recovery of industrial and commercial packaging waste, with a view to fulfilling the take-back obligation;
- 2) consistently attain, each year during the term of the accreditation, the targets specified in article 3(2) and (3) of this Agreement ;
- 3) in a non-discriminatory way, calculate the contributions of its contracting parties for each packaging material, taking into consideration the costs incurred by each industrial unpacker of industrial and commercial packaging waste, with a view to attaining the targets of the take-back obligation and, in particular, the recycling targets;
- 4) take special measures in favour of small-scale industrial unpackers, i.e. the unpackers with fewer than 50 employees and the retailers, in order to promote the prevention and recovery of industrial and commercial packaging waste and to reduce the costs for the management thereof. If need be, the Interregional Packaging Commission shall specify, in the accreditation of the organisation concerned, additional requirements in order to ensure correct application of this provision;
- 5) minimise disruption of the free market of selective collection, recycling and recovery and respect equality between private or public operators responsible for the collection, sorting, recycling and recovery of industrial and commercial packaging waste;

- 6) undertake to enter into a contract, pursuant to article 10(2)(5), with any responsible company subject to the take-back obligation requesting this;
- 7) encourage as many industrial unpackers as possible to adopt selective collection, recycling and recovery by means of fixed financial defrayments in the costs of selective containers; such containers are intended, for a substantial part, for the collection of industrial and commercial packaging waste free from any contaminants or impurities that might hinder recycling or recovery; the Interregional Packaging Commission shall specify, in the accreditation of the organisation concerned, the minimum required content of industrial and commercial packaging waste in the containers intended for the collection of industrial and commercial waste;
- 8) permit employment creation in social purpose associations or companies that, in accordance with their social aims, are involved in collecting, sorting, recycling and recovering packaging waste;
- 9) ensure that the recycling and recovery of industrial and commercial packaging waste, and the environmental and social conditions under which recycling and recovery take place, can be verified and monitored.

Subsection 4 – Monitoring of accredited compliance organisations

Article 15

In order to obtain any information it may require, the Interregional Packaging Commission may question the auditors of the accredited compliance organisation. The Interregional Packaging Commission may have the accounts examined by a company auditor or an independent auditor appointed by the Commission. If no auditors have been appointed by the accredited compliance organisation, this task shall be carried out at the latter's expense.

Article 16

The government of each Belgian region may appoint and remove from office one representative, as well as his deputy, at the accredited compliance organisation for household packaging waste; this representative shall ensure that the public service mission and the obligations imposed by this Agreement are complied with.

At their request, the representatives shall be heard by the board of the accredited compliance organisation. They may, at any time, question the auditor and inspect all accounts, correspondence, minutes and, in general, all documents of the accredited compliance organisation. They may ask the directors and staff of the accredited compliance organisation for any explanation or information and conduct any checks that they deem necessary for the performance of their mandate.

The representative shall report to the Belgian region concerned.

Section 3 – Obligations incumbent on sellers and consumers

Article 17

1. Any seller of packaged household goods, with the exception of retailers, shall be required to accept, on his own responsibility, in the receptacles provided for this purpose, any transport and grouped packaging that is returned or left on the premises by consumers, provided that the packaging comes from products that he has marketed.

2. With regard to industrial and commercial packaging waste and if the responsible company is the party referred to in article 2(20)(a) or (b), the industrial unpacker of the packaged goods must:

- either make the packaging waste available to the responsible company or to the party appointed for that purpose pursuant to article 7 making this request,
- or – if he does not comply with the request of the responsible company or of the accredited compliance organisation within the meaning of article 8 – recycle, recover or incinerate the packaging waste himself (including energy recovery at waste incineration plants) with a view to attaining, at the very least, the recycling or recovery targets of the take-back obligation, and give proof thereof to the responsible company, either directly or via sellers of packaged goods.

CHAPTER IV – REPORTING OBLIGATION

Article 18

1. The responsible company subject to the take-back obligation shall be required, by 31 March each year and using a form designed by the Interregional Packaging Commission, to provide the said Commission, for each packaging type, with information for the previous calendar year and estimates for the current calendar year regarding:

- 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 least the presence of heavy metals and recycled materials, expressed as percentages by weight;
- 3) the total quantity of packaging waste, per material, that is collected, recycled, recovered and incinerated with or without energy recovery and landfilled;
- 4) the total quantity, by weight and by volume, per packaging material, of goods marketed in one-way packaging;
- 5) the total quantity, by weight, per packaging material and per goods type, of goods marketed in reusable packaging;
- 6) the total quantity of packaging, per material, regarded as hazardous because of contamination from the products it contains.

2. Any responsible company may contractually entrust, per sector of economic activity, the reporting obligations arising from paragraph 1 of this article to a legal entity. The Interregional Packaging Commission may specify the conditions for this delegation.

3. If the responsible company appoints an accredited compliance organisation to carry out its take-back obligation, the latter shall supply the Interregional Packaging Commission with at least the information required under paragraph 1(1), (3), (4) and (5) of this article, for each of its contracting parties. The accredited compliance organisation may globally submit the information required under paragraph 1(3) of this article for all of its contracting parties.

4. On the second and third anniversaries of the deadline for submitting the packaging prevention plan referred to in Chapter II of this Cooperation Agreement, the responsible company, or the legal entity acting on its behalf, shall be required to provide the Interregional Packaging Commission with an assessment of the execution of this prevention plan, using a form designed by the aforementioned Commission. The latter shall give its opinion on this assessment and, where necessary, ask for corrective action.

5. With regard to household packaging waste, the municipalities or intermunicipalities locally responsible for collecting household waste shall be required to supply the Interregional Packaging Commission, before 31 May of each year, with the information requested by the latter concerning the collection and treatment of household packaging waste and concerning their respective contractual agreements with the accredited compliance organisation. The Interregional Packaging Commission shall design a standard form for the fulfilment of this reporting obligation, which shall be sent out by post or made available online. The Interregional Packaging Commission shall only ask the municipalities or intermunicipalities for information that it does not already have or that it could not otherwise obtain by asking the competent regional administrations.

Article 19

Each year, before 31 March, any accredited compliance organisation shall be required to provide the Interregional Packaging Commission with information for the previous calendar year and estimates for the current calendar year regarding:

- 1) the complete list of the responsible companies that have contracted with the accredited compliance organisation in application of article 8;
- 2) per packaging waste type and per material of which this waste is composed, the total weight that has been placed on the market by its contracting parties as well as the collection, recycling, recovery and disposal targets;
- 3) the financial resources made available by each responsible company that has contracted with the accredited compliance organisation in application of article 8;
- 4) the financial data used to calculate contributions.

Article 20

1. With the exception of communications regarding the practical procedures for the collection of packaging waste, as referred to in articles 10(2)(6), 13(1)(4) and 13(1)(7), any consumer information and awareness campaigns or publicity campaigns planned by the accredited compliance organisation must first be submitted to the Interregional Packaging Commission for its opinion. In its report, the latter shall specify whether the proposed activities are in accordance with the objectives and provisions of the Cooperation Agreement and with the objectives of regional waste policies.

2. The accredited compliance organisation may not under any circumstances be a commercial sponsor, where "commercial sponsoring" shall be taken to mean sponsoring whose main objective is to promote the accredited compliance organisation's name and image. Sponsoring primarily aimed at furthering the accredited compliance organisation's object, as identified in its articles of association, is not regarded as "commercial sponsoring".

Article 21

If any logo or text indicating fulfilment of the obligations arising from this Cooperation Agreement is to be placed on packaging, the matter must first be submitted to the Interregional Packaging Commission for its opinion, either by the accredited compliance organisation or, if fulfilment of the take-back obligation was not entrusted to an accredited compliance organisation, by the responsible company. In its report, the Interregional Packaging Commission shall specify whether the design of the logo or text is in accordance with the objectives and provisions of the Cooperation Agreement and with the objectives of regional waste policies.

Article 22

Sellers, with the exception of retailers, shall be required, once every three years and on the date specified in article 4(1) for submitting the packaging prevention plans, to present an action plan to the Interregional Packaging Commission for its opinion, outlining how they intend to communicate with their customers about:

- the amounts spent, by the responsible company, on every type of packaging sold at the point of sale in order to finance the obligations under this Cooperation Agreement;
- correct application of article 17(1).

In its report, the Interregional Packaging Commission shall specify whether the action plan is in accordance with the objectives and provisions of the Cooperation Agreement and with the objectives of regional waste policies.

This action plan may be sent as part of the prevention plan referred to in article 4. The information conveyed to customers shall also include a general message concerning the prevention and management of packaging waste.

For the fulfilment of this obligation, sellers may ask a third-party legal entity to act in their stead.

CHAPTER V – THE INTERREGIONAL PACKAGING COMMISSION AND THE COMPETENT REGIONAL ADMINISTRATION

Section 1 – The Interregional Packaging Commission

Article 23

1. The Belgian regions shall maintain the existence of the Interregional Packaging Commission, established under the Cooperation Agreement of 30 May 1996 on the prevention and management of packaging waste, as a joint institution, as referred to in article 92a of the special law of 8 August 1980 on institutional reform. The Commission shall have legal personality.

The Interregional Packaging Commission shall be composed of a decision-making body and a Permanent Secretariat, whose role is to assist the decision-making body.

The decision-making body shall be composed of nine members. Each regional government has the right to appoint and dismiss three full members and three alternates.

The Permanent Secretariat shall be composed of civil servants and members of staff who are seconded to the Interregional Packaging Commission by each regional government to perform the Commission's administrative and technical tasks.

Instead of providing personnel, each region may opt to allocate specific budgets to the Interregional Packaging Commission each budget year to enable the latter to recruit its own staff.

The specific budgets allocated shall also cover the running expenses of the employers' social-accounting secretariat that will be appointed by the Interregional Packaging Commission to deal with the practical aspects of human resources management.

2. The staff members of the Permanent Secretariat provided by the regional governments shall continue to be governed by those provisions of the articles of association applicable to them. Responsibility for supervision of the day-to-day work of the staff of the Permanent Secretariat rests with the director who, if appropriate, shall report on this to the administration that specifically seconded these staff members.

3. The Permanent Secretariat shall have a director and a management committee, in which the three Belgian regions are represented. The operation of the Permanent Secretariat is regulated by a set of standing rules,

approved by the decision-making body. These standing rules clarify the respective powers of the director and the management committee.

The director and the departmental managers are appointed by the decision-making body.

The day-to-day management of the Permanent Secretariat is the purview of the director. The departmental managers each have a specific job description, within which they prepare policy. The management committee ensures the coherence of this policy across the various departments. All key decisions on matters of principle and, in particular, the decisions that, by virtue of this Cooperation Agreement, are the exclusive preserve of the decision-making body, are discussed beforehand in the management committee and then submitted to the decision-making body for approval.

4. The director and the Chairman shall represent the Interregional Packaging Commission in legal proceedings. In cases of extreme urgency, the director is authorised to act alone.

Article 24

The decision-making body of the Interregional Packaging Commission shall meet at least ten times a year or at the express request of one of the members. Its meetings shall only be valid if the three Belgian regions are represented.

Each year, the members of the decision-making body of the Interregional Packaging Commission shall appoint, effective as from 5 March, a new Chairman from within their midst. The Chairmanship shall rotate between the three Belgian regions. The role of secretary to the decision-making body shall be fulfilled by the Permanent Secretariat.

All opinions, proposals and decisions of the Interregional Packaging Commission shall be by consensus, with at least one representative of each region present.

Article 25

Once a year and no later than six months before the start of the budget year, the decision-making body of the Interregional Packaging Commission shall submit a budget proposal to the regional governments.

The annual budget of the Interregional Packaging Commission shall be funded by each Belgian region in accordance with the allocation key used in article 16a(1) of the special law of 16 January 1989 on the financing of the Communities and Regions.

Article 26

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

- 1) approve the packaging prevention plans and give its opinion on the assessments thereof;
- 2) approve the way in which responsible companies that have not appointed an accredited compliance organisation to carry out their take-back obligation discharges their obligations;
- 3) monitor the budget of, and the system of tariffs used by, the accredited compliance organisations;
- 4) grant, monitor, suspend or withdraw the accreditation of an organisation or, at any time, after having heard the representative of the accredited compliance organisation, amend the conditions for carrying out its activities, as laid down in the accreditation, for reasons of public interest;

- 5) set the amount of each financial guarantee and ask for its release in the event of failure to fulfil the obligations incumbent on the accredited compliance organisation, pursuant to article 11 of this Cooperation Agreement;
- 6) advise on any consumer information and awareness campaigns or publicity campaigns planned by the accredited compliance organisation, with the exception of communications regarding the practical procedures for the collection of packaging waste, as referred to in articles 10(2)(6), 13(1)(4) and 13(1)(7);
- 7) advise on the placing of a logo or text on packaging with a view to clarifying the fulfilment of obligations under this Agreement;
- 8) advise on the message referred to in article 22;
- 9) determine the overall reference figures on the weight of one-way packaging that is annually marketed in each region, and the specific reference figures on the weight of the one-way packaging that is annually marketed by responsible companies having contracted with an accredited compliance organisation;
- 10) establish the organisation chart and the internal operating rules of the Interregional Packaging Commission;
- 11) authorise certain groups of responsible companies to be represented within the accredited compliance organisation, as provided for in article 8, and determine the conditions of this representation;
- 12) determine the conditions for the delegation referred to in article 18(2).

2. The Interregional Packaging Commission shall verify:

- 1) how the responsible companies or the accredited compliance organisations meet the minimum recovery targets plus the increments for “incineration at waste incineration plants with energy recovery” and recycling;
- 2) the information that has to be reported to it, pursuant to articles 18 and 19.

3. The members of the Permanent Secretariat of the Interregional Packaging Commission shall question the auditors of the accredited compliance organisation or examine the accounts, pursuant to article 15, and shall take responsibility for monitoring the provisions of the Cooperation Agreement.

4. The Interregional Packaging Commission shall draw up an annual report on its activities for the regional governments.

5. The Interregional Packaging Commission may support the Belgian regions, at their request, with the organisation of take-back obligations for waste other than packaging waste.

The Interregional Packaging Commission shall, at the request of the Belgian regions, among other things:

- draft the requisite technical notes and explanatory memoranda to ensure an interregional approach to the take-back obligations for waste streams other than packaging waste;
- organise joint consultative meetings of the Belgian regions with stakeholders concerning these take-back obligations;
- organise consultative meetings between the Belgian regions concerning these take-back obligations.

A representative of the Interregional Packaging Commission shall optionally participate in the above-mentioned meetings. The Interregional Packaging Commission shall see to it that minutes are kept of these meetings, if so requested.

Article 27

The Interregional Packaging Commission shall formulate proposals and/or expert advice for the regional governments on:

- 1) its internal operation and its annual budget;
- 2) amending this Cooperation Agreement on legal or factual grounds;
- 3) the way in which the accredited compliance organisation manages the collection of contributions and the allocation of funds;
- 4) the efficiency of the waste recycling and recovery chains;
- 5) the assessment of the amount of contributions the accredited compliance organisation asks its contracting parties to pay.

Section 2 – The competent regional administrations

Article 28

Each of the competent regional administrations shall:

- 1) offer to mediate in the event of a dispute between the accredited compliance organisation and the municipality or intermunicipality on the conclusion or performance of the contract referred to in article 13(1)(7);
- 2) advise the Interregional Packaging Commission on the efficiency of the waste recovery and recycling chains, as well as on incineration at waste incineration plants with energy recovery;
- 3) advise the Interregional Packaging Commission on the conformity of the planning of the geographical areas covered by the accredited compliance organisation, in relation to the regional waste plan.

CHAPTER VI – MONITORING, ADMINISTRATIVE PENALTIES AND PENAL PROVISIONS

Section 1 – Monitoring

Article 29

1. Without prejudice to the powers of officers from the Criminal Investigation Department, the staff members of the Permanent Secretariat of the Interregional Packaging Commission, as well as the civil servants and other employees of each competent regional administration that are appointed by their government, shall be responsible for monitoring the provisions of this Cooperation Agreement. The Belgian regions shall ensure that the civil servants and other employees of the competent regional administration comply with the general monitoring guidelines drawn up by the Interregional Packaging Commission.

The civil servants in the Permanent Secretariat of the Interregional Packaging Commission, as well as the civil servants and other employees of each competent regional administration that are appointed by their government, shall have the legal status of officials of the Criminal Investigation Department and shall take an

oath in that capacity. They may be assisted by the regular police. Their reports have evidential value until proven otherwise.

2. Any responsible company, any seller, any accredited compliance organisation and any legal entity within the meaning of article 4(2) shall be required to produce, at the request of the parties referred to in paragraph 1, all documents and correspondence and to supply, orally or in writing, all information on the fulfilment of its obligations under this Cooperation Agreement.

If these documents and correspondence are held, drawn up, issued, received or stored on a computer system, the parties referred to in paragraph 1 shall have the right to have the data on data carriers sent to them in a readable and understandable form, for inspection purposes. The parties referred to in paragraph 1 may also ask the aforementioned party to make copies in the requested format, in their presence and using its own equipment, of all or part of the aforementioned data, and to carry out any data processing deemed necessary to monitor compliance with the obligations of this Cooperation Agreement.

3. Any responsible company, any seller and any accredited compliance organisation shall be required to grant free access, at any time and without prior notice, to the premises at which it carries out its activities, insofar as these premises are not used for habitation, in order to enable the parties referred to in paragraph 1 to monitor compliance with the obligations of this Cooperation Agreement.

Premises at which activities are carried out shall include offices, factories, workshops, shops, garages and land that is used for factories, workshops or warehouses.

Section 2 – Suspension and withdrawal of accreditation

Article 30

If an accredited compliance organisation fails to fulfil any of the obligations referred to in articles 12, 13 and 14, the Interregional Packaging Commission may issue a warning to this organisation by registered letter. This warning shall explicitly state the obligations that the accredited compliance organisation has failed to fulfil, the specific measures to be taken by the accredited compliance organisation and a reasonable deadline for doing so.

The Interregional Packaging Commission shall hold a hearing with the accredited compliance organisation if the latter so requests. Prior to the hearing, the accredited compliance organisation shall submit, in writing, to the Interregional Packaging Commission, all arguments that it deems useful to its defence. The request for a hearing shall not suspend legal action.

The Interregional Packaging Commission may suspend accreditation if the accredited compliance organisation:

- 1) fails to carry out the measures mentioned in the warning, or does not do so in the time given;
- 2) does not attain the recycling and recovery targets it is required to meet;
- 3) does not fulfil its reporting obligation;
- 4) no longer satisfies the accreditation requirements;
- 5) infringes environmental legislation.

Accreditation may be suspended only if the accredited compliance organisation has first been invited by the Interregional Packaging Commission to attend a hearing.

If the Interregional Packaging Commission suspends accreditation, it shall specify the duration of this suspension. The Interregional Packaging Commission shall lift the suspension if it establishes that the

accredited compliance organisation has terminated the actions that led to the suspension. If the accredited compliance organisation has not terminated these actions before the end of the suspension, the Interregional Packaging Commission may then withdraw accreditation, after first inviting the accredited compliance organisation to a hearing.

Decisions that result in suspension or withdrawal of accreditation shall be published in full in the Belgian Official Gazette.

Section 3 – Administrative fines

Article 31

1. Members of the Permanent Secretariat of the Interregional Packaging Commission may impose an administrative fine on a responsible company referred to in article 4(1) that has not entrusted its obligation to a legal entity within the meaning of article 4(2) and that *either* fails to submit a packaging prevention plan pursuant to the first subparagraph of article 4(1) *or*, after the Interregional Packaging Commission has rejected its packaging prevention plan, fails to submit, within the period specified in the second subparagraph of article 5(1), a packaging prevention plan that has been amended to reflect all the comments made by the Interregional Packaging Commission. The administrative fine for this shall be EUR 2,500.

Members of the Permanent Secretariat of the Interregional Packaging Commission may impose an administrative fine on a legal entity within the meaning of article 4(2) that *either* fails to submit a packaging prevention plan pursuant to the first subparagraph of article 4(1) *or*, after the Interregional Packaging Commission has rejected its packaging prevention plan, fails to submit, within the period specified in the second subparagraph of article 5(1), a packaging prevention plan that has been amended to reflect all the comments made by the Interregional Packaging Commission. The administrative fine shall be EUR 2,500 per responsible company that has entrusted its obligation to this legal entity. The total amount of the administrative fine may not, however, exceed EUR 25,000.

2. Members of the Permanent Secretariat of the Interregional Packaging Commission may impose an administrative fine on a responsible company or an accredited compliance organisation that fails to meet, within the stipulated period, the targets – expressed in tonnes per year – that must be attained pursuant to articles 6 or 12. The administrative fine shall be:

- 1) EUR 500 for each part-tonne of packaging waste that, within the prescribed period, was not recovered or incinerated at waste incineration plants with energy recovery, and;
- 2) EUR 1,000 for each part-tonne of packaging waste that was not recycled within the prescribed period.

The total amount of the administrative fine may not, however, exceed EUR 25,000.

The administrative fine shall be calculated based on the data that is available to the Interregional Packaging Commission.

3. Members of the Permanent Secretariat of the Interregional Packaging Commission may impose an administrative fine on an accredited compliance organisation that has received a warning within the meaning of article 30(1) and that has not taken the measures referred to in this warning, or did not do so within the deadline. The administrative fine shall be EUR 500 for each day that the measures are not taken, counting from the day after the warning was received, unless the warning itself lays down a later date before which the fine cannot be levied.

The total amount of the administrative fine may not, however, exceed EUR 10,000.

4. Members of the Permanent Secretariat of the Interregional Packaging Commission may impose an administrative fine on:

- 1) sellers or industrial unpackers not fulfilling the obligations arising from article 17;
- 2) responsible companies not fulfilling the obligations arising from article 18;
- 3) sellers not fulfilling the obligations arising from article 22.

The administrative fine shall be EUR 500.

5. In the event of multiple infringements, only the maximum permissible administrative fine shall be imposed.

If a new infringement is committed within three years of a criminal conviction for one of the offences listed in article 32 or following the imposition of an administrative fine, the amounts mentioned in this article shall be doubled.

Section 4 – Penal provisions

Article 32

1. Any responsible company that has not entrusted its obligations to a legal entity according to article 4(2), and that does not comply with the provisions of article 4 itself, shall be liable to imprisonment for a term of eight days to two months and a fine of five hundred to five thousand euros, or to only one of these penalties.

Any legal entity within the meaning of article 4(2) that does not comply with the provisions of article 4 shall be fined five hundred to five thousand euros.

2. Any responsible company that has not entrusted its obligations to a legal entity according to article 7(1), and that fails to fulfil the take-back obligation in article 6 itself, shall be liable to imprisonment for a term of one month to one year and a fine of one thousand to two million euros, or to only one of these penalties.

Any legal entity referred to in the first subparagraph of article 7(1) that fails to fulfil the take-back obligation in article 6 shall be fined one thousand to two million euros.

3. Any responsible company that fails to fulfil the reporting obligation in the second and third subparagraphs of article 7(1) shall be liable to imprisonment for a term of eight days to one month and a fine of one hundred to five thousand euros, or to only one of these penalties.

4. Any responsible company that has not entrusted its obligations to a legal entity according to article 18(2), and that fails to fulfil the reporting obligation in article 18(1) itself, shall be liable to imprisonment for a term of eight days to one month and a fine of one hundred to five thousand euros, or to only one of these penalties.

Any legal entity referred to in article 18(2) that fails to fulfil the reporting obligation in article 18(1) shall be fined one hundred to five thousand euros.

Any responsible company that has not entrusted its obligations to a legal entity according to article 4(2), and that fails to fulfil the reporting obligation in article 18(4) itself, shall be liable to imprisonment for a term of eight days to one month and a fine of one hundred to five thousand euros, or to only one of these penalties.

Any legal entity referred to in article 4(2) that fails to fulfil the reporting obligation in article 18(4) shall be fined one hundred to five thousand euros.

5. Any accredited compliance organisation infringing the provisions of article 12, article 13(1) or article 14 shall be fined one thousand to two million euros.

6. Any accredited compliance organisation that fails to fulfil the reporting obligation in article 18(3) or article 19 shall be fined one hundred to five hundred thousand euros.

7. Any party deliberately obstructing or attempting to obstruct supervision of compliance with this Cooperation Agreement in any manner shall be liable to imprisonment for a term of one month to one year and a fine of one hundred to one million euros, or to only one of these penalties.

Section 5 – Procedure

Article 33

1. The procedure set forth in this article shall only apply if article 31 of this Cooperation Agreement also provides for the possibility of imposing an administrative penalty for an act described as a criminal offence in article 32.

2. If a member of the Permanent Secretariat of the Interregional Packaging Commission becomes aware of a criminal offence, this reporting officer shall decide whether, in his opinion, the offence is sufficiently serious to warrant criminal proceedings. If he believes this to be the case, he shall send his official report to the Public Prosecutor. He shall also send a duplicate copy to the offender.

If the reporting officer holds that the offence is insufficient to warrant criminal proceedings, he shall send his assessment, together with a copy of the supervision report, to the Public Prosecutor, who shall approve or reject this assessment. Rejection by the Public Prosecutor means that the official report is to be sent immediately to the Public Prosecutor, with a copy to the offender.

If, after a period of ten working days, the Public Prosecutor still has not communicated his decision on the reporting officer's assessment to the latter, the assessment shall be deemed to have been approved. In that event, the reporting officer shall send his official report to those members of the Permanent Secretariat of the Interregional Packaging Commission that have been appointed for this purpose by the decision-making body of the Interregional Packaging Commission, and the procedure in article 34 is then followed. He shall also send a copy of his official report to the offender.

3. If the reporting officer is not a member of the Interregional Packaging Commission, he shall send a copy of his official report to the offender and advise the Interregional Packaging Commission thereof.

4. The Public Prosecutor shall have a period of six months, from the day after receiving the official report, to inform the Permanent Secretariat of the Interregional Packaging Commission, in writing, that he wishes to institute criminal proceedings or, alternatively, that he wishes to enforce article 216a or article 216c of the Code of Criminal Procedure.

5. If the Public Prosecutor announces, within the six-month period, that he wishes to bring proceedings or that he wishes to enforce article 216a or article 216b of the Code of Criminal Procedure, no administrative fine may be imposed pursuant to article 31.

6. If the Public Prosecutor gives written notice that he does not wish to bring proceedings or seek enforcement of article 216a or article 216b of the Code of Criminal Procedure, the members (appointed for this purpose by the decision-making body of the Interregional Packaging Commission) of the Permanent Secretariat of the Interregional Packaging Commission may then impose an administrative fine for the infringement, pursuant to articles 31 and 34. This shall also apply in the event that the Public

Prosecutor does not communicate his decision in writing within six months of the date of receiving the official report.

7. Paragraphs 4, 5 and 6 of this article shall not apply where a civil party brings criminal proceedings. If the Public Prosecutor holds that an administrative fine is more appropriate in this case, he shall inform the Interregional Packaging Commission thereof in writing. The procedure in article 34 shall then be applied.

8. Criminal proceedings shall be discontinued, in all cases, as from the decision to impose an administrative fine under article 34. If a court of criminal law has given a final and non-appealable decision on the criminal offence, imposition of an administrative penalty shall no longer be possible.

Article 34

1. The members (appointed for this purpose by the decision-making body of the Interregional Packaging Commission) of the Permanent Secretariat of the Interregional Packaging Commission may impose an administrative fine for the infringements referred to in article 31.

Before taking a decision to impose an administrative fine, the said members shall invite the offender to present his defence within the period that they shall specify. They offender shall be granted a hearing if he requests this within the aforementioned period.

2. The members (appointed for this purpose by the decision-making body of the Interregional Packaging Commission) of the Permanent Secretariat of the Interregional Packaging Commission shall impose the administrative fine within six months of the date on which the official report was prepared. In the case of article 33(6) and (7), this period shall begin only from the day after receiving the written announcement from the Public Prosecutor or, otherwise, upon expiry of the six-month period referred to in article 33(6).

3. The members (appointed for this purpose by the decision-making body of the Interregional Packaging Commission) of the Permanent Secretariat of the Interregional Packaging Commission shall state their reasons for deciding to impose an administrative fine. They shall set the exact amount of the fine.

4. The Interregional Packaging Commission shall notify the fined party of the decision by registered post or shall have it served by means of a writ within one month of the decision being taken, under pain of forfeiture of the fine.

5. If an official report has been sent to the Public Prosecutor, as in the case of article 33(7) of this Cooperation Agreement, the Interregional Packaging Commission shall send a copy of the decision to the Public Prosecutor.

6. The administrative fine must be paid within three months of the day after service or notification of the decision.

The fine may be paid by deposit or transfer to the Interregional Packaging Commission's account. The decision shall expressly state this bank account number and the reference that must be quoted upon remittance.

7. Any fined party that contests the decision of the members (appointed for this purpose by the decision-making body of the Interregional Packaging Commission) of the Permanent Secretariat of the Interregional Packaging Commission may appeal to the Court of First Instance. Based on articles 1034a ff. of the Belgian Judicial Code, the appeal is brought on an *inter partes* application. The court at Brussels shall have territorial competence. The appeal must be lodged within three months of service or notification of the decision. This term is prescribed under pain of forfeiture. The Interregional Packaging Commission shall act as defendant in this appeal.

The appeal shall not suspend the decision. If an appeal is brought, the Interregional Packaging Commission shall deposit the paid fine into the account of the "Caisse des dépôts et consignations" (Deposit

and Consignment Office), pending the final decision. The Court of First Instance in Brussels is, however, empowered to suspend execution of the decision to impose the fine against which appeal was taken, if enforcement thereof is likely to have serious repercussions for the party concerned.

The Court of First Instance in Brussels may reduce the administrative fine to below the legal minimum, provided there is evidence of extenuating circumstances. The Court of First Instance in Brussels is also authorised to suspend the execution of penalties, whenever there is evidence of the required circumstances.

8. In default of payment of the administrative fine within three months of notification, the Interregional Packaging Commission shall send a copy of the judicial decision, together with a request for collection, to the department for non-tax collection within the Federal Public Service for Finance.

9. The fine shall accrue to the Interregional Packaging Commission.

CHAPTER VIII – FINAL PROVISIONS

Article 35

In order to settle any disputes that may arise from the interpretation and execution of this Cooperation Agreement, a cooperation court shall be set up, composed of one representative of each Belgian region, duly appointed by their respective governments.

The operating costs of the cooperation court shall be borne by each of the regional governments in accordance with the allocation key used in article 16a(1) of the special law of 16 January 1989 on the financing of the Communities and Regions.

The proceedings of this court shall be followed pursuant to the relevant provisions specified in the law of 23 January 1989 on courts of justice, referred to in article 92a(5) and (6) and article 94(3) of the special law of 8 August 1980 on institutional reform.

Article 36

The Cooperation Agreement of 30 May 1996 on the prevention and management of packaging waste is hereby repealed.

Article 37

This Cooperation Agreement shall come into force on 1 January 2009.

Any approved packaging prevention plan within the meaning of article 4 that is still current when this Cooperation Agreement comes into force shall remain applicable for the period specified.

Any accreditation within the meaning of article 10 that was granted before this Cooperation Agreement comes into force, and that does not comply with the provisions of this Cooperation Agreement, shall be adapted in accordance with article 26(1)(4) within a maximum of six months from the entry into force referred to in the first subparagraph of this article.

Brussels, 04-11-2008

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Kris PEETERS

Flemish Minister for Public Works, Energy, the Environment and Nature,

Hilde CREVITS

Minister-President of the Walloon Government,

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Walloon Minister for Agriculture, Rural Affairs, the Environment and Tourism,

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Minister-President of the Brussels-Capital Government,

Charles PICQUE

Minister of the Government of the Brussels-Capital Region, responsible for the Environment, Energy,
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Evelyne HUYTEBROECK