



4 November 2008 - Cooperation Agreement on the
prevention and management of packaging waste
(Belgian Official Gazette 29.12.2008)

Amended by the Cooperation Agreement:

- of 2 April 2015 (Belgian Official Gazette 16.06.2015 – entry into force 01.07.2015)
- of 5 March 2020 (Belgian Official Gazette 15.07.2020 – entry into force 03.09.2020)

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 ordinance of the Council of the Brussels-Capital Region of 7 March 1991 on waste prevention and management;

Whereas the present 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 reuse 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 Belgian economic and monetary union;

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

[Having regard to Commission Directive 2013/2/EU of 7 February 2013 amending Annex I to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste;

Whereas, when drawing up the Cooperation Agreement of 4 November 2008, the Belgian Regions deliberately chose not to include Annex 1 of Directive 94/62/EC, as inserted by Directive 2004/12/EC, in the Cooperation Agreement because the amended Directive 94/62/EC also made provision for the European Commission to examine this Annex with a view to its possible amendment, following discussion within the Committee referred to in article 21 of the Directive; whereas Directive 94/62/EC therefore provided for a simple procedure for updating Annex I, so that regular and rapid updates could be expected;

Whereas the European Commission took a long time to come up with a final proposal for amending Annex I and, for reasons of its own, has opted for the instrument of an amending Directive rather than the procedure laid down in the Directive; whereas regular updates of Annex I can now no longer be expected;

Whereas Directive 2013/2/EU includes a formal obligation to transpose it into national law;

Whereas, for some packaging waste, recycling is technically possible but prohibited by a decision of the competent authorities; whereas this obstacle to recycling may infringe the rights of companies responsible for packaging (hereinafter referred to as “responsible companies”) and this infringement should be remedied;

Whereas a derogation from the recycling rates to be achieved has been chosen; whereas this goes right to the heart of the take-back obligation and should therefore be handled with particular care; whereas it is best for the Interregional Packaging Commission to give concrete form to this derogation in the form of an accreditation decision or a decision on how a responsible company must itself fulfil its take-back obligation;

Whereas the Cooperation Agreement of 4 November 2008 can only be amended by means of another Cooperation Agreement, with the force of a decree or ordinance;] **[Agreement 02.04.2015 - entry into force 01.07.2015]**

[Having regard to Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags;

Having regard to Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste;

Having regard to Directive (EU) 2018/852 of the European Parliament and of the Council of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste;

Having regard to the Cooperation Agreement of 4 November 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 law of 8 August 1988 and the special law of 16 July 1993 completing the federal structure of the State, and, in particular, to article 92a(1) and article 6(1)(II)(2);

Having regard to the decree of the Walloon Parliament of 16 February 2017 disbanding the "*Office wallon des déchets*" (Walloon Waste Authority) and amending the decree of 27 June

1996 on waste, the decree of 19 December 2002 establishing financial centralisation of the treasuries of the Walloon public service institutions, Book I of the Environment Code and the tax decree of 22 March 2007 promoting prevention and recovery of waste in the Walloon Region and amending the decree of 6 May 1999 on the establishment and recovery of, and disputes regarding, direct regional taxes;

Having regard to the Walloon Government order of 11 April 2019 amending the Walloon Government order of 19 July 2018 on the organic staffing of the Walloon Public Service;

Whereas Directive (EU) 2018/852 deleted the definition of “reuse” and added a new definition of “reusable packaging”; whereas the latter should be adopted;

Whereas e-commerce, i.e. the sale of products via the internet, represents a growing market share;

Whereas, according to the provisions of the Cooperation Agreement of 4 November 2008, e-commerce retailers may in fact be responsible companies within the meaning of the law; whereas, however, the Cooperation Agreement does not yet explicitly refer to the possibility of e-commerce;

Whereas foreign e-commerce companies, in particular, therefore query whether they are covered by the provisions of the Cooperation Agreement; whereas this lack of clarity should be removed; whereas the definition of “responsible company” should therefore be clarified in order to avoid potentially disrupting the market;

Whereas foreign companies that are responsible for packaging should be accountable in the same way as Belgian companies in the event of an inspection by the competent officials; whereas it is therefore necessary to use an authorised representative based in Belgium; whereas this authorised representative can also ensure that these companies have easier access to the Belgian market;

Whereas it is appropriate to allow the accredited compliance organisations responsible for managing packaging waste to act themselves, if they so wish, as authorised representatives based in Belgium;

Whereas the definition of “competent regional administration” should be amended, pursuant to the decree of the Walloon Parliament of 16 February 2017, which disbanded the *Office wallon des déchets* (Walloon Waste Authority); whereas the abbreviation “IBGE” (Brussels Institute for Environmental Management) can also be deleted after “*Bruxelles Environnement*”;

Whereas the general objectives of the Cooperation Agreement should be brought in line with article 5 of Directive 94/62/EC on packaging and packaging waste, as amended by Directive (EU) 2018/852, as well as with the Belgian Regions’ policy to support recycled content in packaging;

Whereas it is necessary to adapt the recycling targets in the Cooperation Agreement to the minimum recycling targets per material imposed in Directive (EU) 2018/852, which are slightly higher than the recycling targets per material imposed in the Cooperation Agreement of 4 November 2008;

Whereas the new recycling targets per material should be assessed against the results already achieved by the accredited compliance organisations and by the responsible companies that fulfil the take-back obligation themselves;

Whereas the new recycling targets per material are already being met for all materials except plastic and are therefore very realistic; whereas the statutory target therefore mainly aims to maintain the current high level of environmental protection;

Whereas, due to the introduction of selective collection of residual household plastics via the collection of a broader range of PMD, a very ambitious – though still realistic – target can also be set for household plastics;

Whereas for industrial & commercial plastics, the ambitious targets should reflect the reality on the ground for industrial & commercial waste and packaging waste;

Whereas the increase in the recycling targets is partly prompted by the strategic importance of the “circular economy”, i.e. to keep scarce and valuable raw materials in the system as much as possible;

Whereas the provisions also enshrine voluntary commitments made by the industry;

Whereas some food and beverage packaging is specifically suited for consumption on-the-go, and whereas some of this packaging therefore ends up in litter, with a particularly high social cost;

Whereas the rate of selective collection and recycling of packaging consumed at home is already very high;

Whereas the rate of selective collection and recycling of packaging consumed “out-of-home”, i.e. outside the home, should be increased; whereas some of this consumption is on-the-go consumption;

Whereas a specific and very ambitious target of 90% for the selective collection and recycling of beverage packaging is appropriate in order to prevent the occurrence of beverage packaging in litter; whereas this target is still realistic;

Whereas collecting and recycling 95% of household packaging is also very ambitious, though realistic; whereas this target is necessary to reduce the proportion of household packaging, other than beverage packaging, found in litter;

Whereas the latter target is not in any way inconsistent with European legislation; whereas it is clear from the 12th recital in Directive (EU) 2018/852 of 30 May 2018 amending

Directive 94/62/EC on packaging and packaging waste that setting maximum targets for recycling of packaging waste is no longer necessary;

Whereas Directive (EU) 2018/851 sets general minimum requirements for extended producer responsibility; whereas it provides that “the financial contributions paid by the producer of the product to comply with its extended producer responsibility obligations (...) in the case of collective fulfilment of extended producer responsibility obligations, are modulated, where possible, for individual products or groups of similar products, notably by taking into account their durability, reparability, reusability and recyclability and the presence of hazardous substances, thereby taking a life-cycle approach and aligned with the requirements set by relevant Union law, and, where available, based on harmonised criteria in order to ensure a smooth functioning of the internal market”;

Whereas article 13(1)(4) of the Cooperation Agreement of 4 November 2008, which stipulates the elements that may be taken into account in calculating the fees for the accredited compliance organisation for household packaging waste, should be amended to take account of the new elements provided for in the European Directive;

Whereas the Belgian Regions are faced with an urgent social need, namely to step up the fight against litter;

Whereas the accredited compliance organisation for the management of household packaging waste, the non-profit association Fost Plus, has made voluntary financial commitments to the three Belgian Regions, with the explicit aims of combating the occurrence of packaging in litter and improving the living environment;

Whereas Fost Plus performs a public service mission; whereas Fost Plus is currently the only accredited compliance organisation for household packaging waste; whereas a company responsible for household packaging waste that is unable to fulfil its take-back obligation itself can therefore only call on Fost Plus to fulfil that obligation;

Whereas article 13(1)(4) of the Cooperation Agreement sets out the specific uses to which the contributions of the responsible companies to the operation of Fost Plus can be put; whereas the use of these contributions is limited to fulfilling the take-back obligation; whereas the contribution to the Belgian Regions’ policy, as provided for in article 13(1)(12) of the Cooperation Agreement, also falls within the scope of the take-back obligation in the broad sense of the term, since the total annual contribution to financing the policy of the Regions corresponds to the cost of treating the tonnages that Fost Plus does not yet selectively collect;

Whereas Fost Plus has voluntarily increased its financial commitment to public cleanliness and, in particular, to combating the occurrence of packaging in litter, specifically by introducing a new “additional contribution”; whereas, however, there is no obvious basis for this in the provisions of the Cooperation Agreement and the latter must therefore be clarified;

Whereas it is also important to establish a number of strict conditions for such a voluntary commitment in order to safeguard the rights of the responsible companies;

Whereas equal treatment of the Belgian Regions is absolutely essential, having regard to the third subparagraph of article 6(1)(VI)(2) of the special law of 8 August 1980 on institutional reform, which requires the Regions to exercise their powers in compliance with the principle of the free movement of goods, as well as with the general legal framework of the country's economic and monetary union;

Whereas the initial and sole objective of Fost Plus's voluntary commitment, i.e. to combat the occurrence of packaging in litter, must not be overstepped under any circumstances;

Whereas in the context of its voluntary financial commitment, Fost Plus should take account of the "polluter pays" principle and thus ensure that the increase in responsible companies' contributions does not result in them having to pay for pollution they did not cause, or did not solely cause;

Whereas the Belgian Regions expect the contributions to the financial commitment of the different sectors to be proportionate to their respective responsibility for pollution;

Whereas the members of the non-profit association Fost Plus must be able to express their opinion on the voluntary commitment;

Whereas the financial commitment entered into by Fost Plus must be unambiguous and set out in advance; whereas there must be complete financial transparency about this matter vis-à-vis the Interregional Packaging Commission;

Whereas, from an accounting point of view, it must be possible to make a clear distinction between the additional financing and Fost Plus's normal fees; whereas, moreover, the contributions paid in the past by the responsible companies cannot be used for this financing, since the responsible companies have not been able to express their opinion on this additional commitment at any time;

Whereas the Cooperation Agreement must be amended to give citizens legal certainty;

Whereas packaging waste found in the "Klein Gevaarlijk Afval" (KGA, household hazardous waste) stream in the Flemish Region, in the "Déchets Spéciaux des Ménages" (DSM, special household waste) stream in the Walloon Region and in the "Déchets Chimiques Ménagers/Huishoudelijk Chemisch Afval" (DCM/HCA, household chemical waste) stream in the Brussels-Capital Region entails a particularly high treatment cost;

Whereas this treatment cost is currently borne by the community;

Whereas this treatment cost, in the context of extended producer responsibility, as set out in the European directives, should be paid by the "responsible companies";

Whereas a responsible company that places such packaging on the market can never actually take it back itself; whereas such packaging will always be found in the special collections organised for these streams in accordance with regional regulations;

Whereas it is therefore appropriate to transfer financial responsibility for the costs of treating this stream to the accredited compliance organisation for household packaging waste;

Whereas Directive (EU) 2015/720 of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags introduces the obligation for Member States, as from 27 May 2018, to report to the European Commission on the annual consumption of lightweight plastic carrier bags;

Whereas each Belgian Region has its own policy on plastic carrier bags;

Whereas it is necessary to extend the reporting obligation of the responsible companies and the accredited compliance organisations in order to fulfil the European reporting obligation and implement the Regions' policy on plastic carrier bags;

Whereas plastic carrier bags are intended for household use, so that the waste from these bags is household packaging waste;

Whereas the details of the European reporting obligation can easily be determined and thus also amended by the European Commission; whereas the Interregional Packaging Commission must therefore provide the practical details of the reporting obligation of responsible companies and accredited compliance organisations; whereas, for individual responsible companies, this can be done by including these details in the reporting form, the model for which is determined by the Interregional Packaging Commission, and whereas, for an accredited compliance organisation, this can be done by including these details in the organisation's accreditation; whereas both the reporting form and the accreditation can be easily adapted at short notice;

Whereas it is appropriate to include the main definitions from Directive (EU) 2015/720 in the legal framework; whereas it is not, however, appropriate to include the definition of "oxo-degradable plastic carrier bags", because this definition is not relevant in the context of the present Cooperation Agreement and also refers to "oxo-degradable plastic", as defined in article 3 of Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment; whereas article 5 of this Directive requires Member States to prohibit the placing on the market of products made from oxo-degradable plastic, including carrier bags; whereas the issuing of such a prohibition falls under federal jurisdiction for product standards;

Whereas, when the Cooperation Agreement of 4 November 2008 was concluded, the Belgian Regions did not specify how the staff of the Permanent Secretariat of the Interregional Packaging Commission were to be evaluated; whereas, consequently,

members of staff of the Permanent Secretariat are evaluated according to the rules of the administration that specifically seconded these staff members;

Whereas, in order to ensure the interregional character of the Packaging Commission and to enable it to pursue its specific tasks properly, it is necessary to organise the evaluation of the Director and departmental managers within the Interregional Packaging Commission;

Whereas only the decision-making body of the Interregional Packaging Commission can reasonably be held responsible for evaluating the managerial staff of the Permanent Secretariat;

Whereas article 2 of the law of 19 December 1974 organising relations between public authorities and trade unions representing public-sector employees and article 3 of the Royal Decree of 29 August 1985 establishing basic regulations pursuant to article 2(1)(1) of the law of 19 December 1974 organising relations between public authorities and trade unions representing public-sector employees make it necessary to conduct prior negotiations with the representative trade unions within the committees set up for this purpose, concerning any special procedures for evaluating the Director and the departmental managers;

Whereas it is advisable to update the amounts of administrative fines; whereas this has not been done since 2008;

Whereas criminal fines are updated by means of the legal surcharge mechanism; whereas when the amounts of fines were last amended in the Cooperation Agreement in 2008, these surcharges entailed an increase in criminal fines by a factor of 5.5; whereas the surcharges now entail an increase in criminal fines by a factor of 8;

Whereas it is appropriate to increase administrative fines to the same extent as criminal fines;

Whereas the present Cooperation Agreement was notified to the European Commission on 27 May 2019 in accordance with article 5(1) of Directive (EU) 2015/1535; whereas the standstill period stipulated in article 6 of the aforementioned Directive expired on 28 August 2019;

After consulting the Council of State,] **[Agreement 05.03.2020 - entry into force 03-09-2020]**
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 metropolitan 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 metropolitan area to issue, within the scope of their powers, additional regulations on the collection of packaging waste.

Art. 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. The items listed in Annex I are illustrative examples of the application of these criteria:] (1)

(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 by the definition of waste in the applicable Belgian regional legislation, 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, designed and placed on the market to accomplish multiple trips or rotations within its life cycle by being refilled or reused for the same purpose for which it was conceived;] (2)

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 and provisions 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 when 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 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 itself places it on the Belgian market, whether or not they are small retailers;

[Any natural person or legal entity established outside Belgium who sells products directly to private households in Belgium by means of distance selling shall be considered to be a responsible company within the meaning of b).

The person or entity referred to in the previous paragraph shall appoint a natural person or legal entity established in Belgium as the authorised representative responsible for fulfilling the obligations of the responsible company.

Except in the case of distance selling, any natural person or legal entity established outside Belgium and acting in the capacity of responsible company may appoint a natural person or legal entity established in Belgium as the authorised representative responsible for fulfilling the obligations of the responsible company.

The authorised representative established in Belgium shall be subject to the same obligations as the responsible company. Wherever articles 29, 31 and 32 refer to the responsible company, this shall also be understood to mean its authorised representative.

An authorised representative shall be appointed by written proxy before any products are placed on the market. Written notification of this proxy shall be sent to the Interregional Packaging Commission. Upon termination of the proxy, both parties shall immediately notify the Interregional Packaging Commission in writing and a new authorised representative shall be appointed.] (2)

21) “Seller” shall mean any party that presents packaged goods with a view to selling to consumers in Belgium;

22) “Small retailer” shall mean a natural person or legal entity selling products and goods to the public at one or more points of sale with a combined sales or consumption area of 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 *Service public de Wallonie Agriculture, Ressources naturelles et Environnement* (Walloon Public Service for Agriculture, Natural Resources and the Environment) for the Walloon Region; *Bruxelles Environnement* for the Brussels-Capital Region;] (2)

26) “Regional waste plan” shall mean the plan or plans adopted in accordance with Belgian 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;

[28) “Plastic” shall mean a polymer within the meaning of article 3(5) of Regulation (EC) No. 1907/2006 of the European Parliament and of the Council, to which additives or other substances may have been added, and which is capable of functioning as a main structural component of carrier bags or other packaging;] (2)

[29) “Plastic carrier bags” shall mean carrier bags, with or without handle, made of plastic, which are supplied to consumers at the point of sale of goods or products;] (2)

[30) “Lightweight plastic carrier bags” shall mean plastic carrier bags with a wall thickness below 50 microns;] (2)

[31) “Very lightweight plastic carrier bags” shall mean plastic carrier bags with a wall thickness below 15 microns that are required for hygiene purposes or provided as primary packaging for loose food when this helps to prevent food wastage.] (2)

(1) [Agreement 02.04.2015 - entry into force 01.07.2015] - (2) [Agreement 05.03.2020 - entry into force 03-09-2020]

Art. 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 reusable packaging for the same goods placed on the market does not fall in comparison with the previous year and that the total weight of one-way packaging for the same goods placed on the market is reduced in comparison with the previous year;

3) [to encourage the increase in the proportion of reusable packaging placed on the market and of systems for reusing packaging, to promote and require recovery, in particular recycling, to encourage the increase in the proportion of recycled materials in the packaging placed on the market and to reduce the proportion of packaging waste in non-selective collection systems;] (2)

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 packaged goods, placing them on the market or 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, shall be 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 using the methods determined by the Interregional Packaging Commission, in accordance with European law. They should be achieved for the whole of Belgium.

3. [As from the calendar year following the entry into force of the Cooperation Agreement of 5 March 2020 amending the present Cooperation Agreement, the following minimum recycling rates also have to be achieved for the whole of Belgium for the various packaging materials:

- 90% by weight for glass;
- 90% by weight for paper/cardboard;
- 90% by weight for drink cartons;
- 90% by weight for ferrous metals;
- 75% by weight for aluminium;

- 50% by weight for plastics;
- 80% by weight for wood.

For household packaging waste, as from calendar year 2023, a minimum recycling rate of 65% by weight for plastics must be achieved for the whole of Belgium.

For industrial and commercial packaging waste, as from calendar year 2023, a minimum recycling rate of 55% by weight for plastics must be achieved for the whole of Belgium.

For household packaging waste, as from calendar year 2030, a minimum recycling rate of 70% by weight for plastics must be achieved for the whole of Belgium.

For industrial and commercial packaging waste, as from calendar year 2030, a minimum recycling rate of 65% by weight for plastics must be achieved for the whole of Belgium.

The target recycling rates listed above shall be calculated using the methods determined by the Interregional Packaging Commission, in accordance with European law.] (2)

[4. By means of a decision within the meaning of article 7(2) or article 10(3), the Interregional Packaging Commission may grant special and temporary exemption from the obligations of one or more responsible companies in accordance with the second and third subparagraphs of article 6, and from the obligations of the accredited compliance organisation in accordance with article 12(2), if each and all of the following conditions are met:

- 1) exemption is granted for plastic packaging of pesticides for agricultural use;
- 2) the packaging waste for which exemption is granted is subject to specific selective collection and appropriate treatment, which are carried out entirely at the expense of the responsible company or companies;
- 3) the packaging waste for which exemption is granted is technically recyclable;
- 4) the packaging waste for which exemption is granted may not be recycled as a result of a decision by the competent federal or regional authority;
- 5) exemption is justified on environmental protection and public health grounds.

The decision of the Interregional Packaging Commission within the meaning of article 7(2) shall automatically lapse one year after any one of the conditions set out in the first paragraph is no longer met. The decision of the interregional Packaging Commission within the meaning of article 10(3) shall be withdrawn by the Interregional Packaging Commission, by application of article 26(1)(4), no later than one year after any one of the conditions set out in the first paragraph is no longer met.] (1)

(1) [Agreement 02.04.2015 - entry into force 01.07.2015] - (2) [Agreement 05.03.2020 - entry into force 03-09-2020]

Chapter II – Packaging prevention plan

Art. 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 past 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 that will be 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.

Art. 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 time limit 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 amount 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

Art. 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).

Art. 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.

Art. 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 itself pursuant to article 7 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, including small retailers, to be represented by another party vis-à-vis the accredited compliance organisation. The Interregional Packaging Commission may specify the terms and conditions of this representation.

Responsible companies are deemed to have fulfilled their take-back obligation if they – either directly or through the offices of a natural person or 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

Art. 9. 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, if necessary extended to acting as an authorised representative responsible for fulfilling the obligations of a responsible company established outside Belgium;]
- 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.

[Agreement 05.03.2020 - entry into force 03-09-2020]

Art. 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, for each material, the way in which the contributions are collected;

- the conditions and procedures for revising the contributions to reflect changes in the obligations incumbent on the accredited compliance organisation under this Cooperation Agreement;

- the way in which revenue is allocated to keep the system functioning properly, e.g. by accumulating reserves;

- estimated expenditure;

- financing of any 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 specify:
 - the procedures for collecting household packaging waste and for dealing with all of the packaging waste collected;
 - 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;
 - 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/municipalities or intermunicipality/intermunicipalities, including energy recovery and disposal of the residues from these operations;
 - the rules and procedures for the payment of communication costs relating to the practical procedures for collecting packaging waste;
 - 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);
 - 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 resources and infrastructure that will make it possible to achieve, every year for the duration of the requested accreditation, the targets provided for in the present Cooperation Agreement;
 - a conclusive description of how the accredited compliance organisation intends to contribute to 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 small 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 requirement 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

Art. 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 deposited 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 due and payable in whole or in part at the 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 incumbent on 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

Art. 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 the present 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 time limit 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 time limits specified in the accreditation;
- 7) promote the selective collection of packaging waste.

Art. 13. 1. If the take-back obligation relates to household packaging waste, the accredited compliance organisation is performing a public service mission and should, in addition to the obligations laid down in article 12:

- 1) uniformly cover the whole of the Belgian territory in which responsible companies place their products on the market, 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;
[2a): collect and recycle at least 90% of beverage packaging by 2022;]
[2b): collect and recycle at least 95% of household packaging by 2025;]
- 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;
- each material's durability, repairability, reusability and recyclability and the presence of hazardous substances;

with a view to financing the full cost of:

- existing and future selective collections according to the procedures determined by the municipality or intermunicipality locally responsible for collecting household waste;
- selective collection of household packaging waste streams 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;
- as from 1 January 2021: recycling, recovering and possibly disposing of packaging waste that is contaminated with or has contained hazardous substances;

and in order to contribute towards financing the Belgian Regions' packaging waste policy, through the contributions referred to in point 12) and through voluntary financial commitments, all of the following conditions being met:

- a) the financial commitments per capita and per year made in each Region shall be identical;
- b) the financial commitments shall be made for the purpose of combating packaging litter;
- c) the financial commitments shall be explicitly approved by the competent statutory institutions of the accredited compliance organisation;
- d) the financial commitments shall be determined in advance and in an unambiguous manner;
- e) the financial commitments shall be financed by a special surcharge on top of the accredited compliance organisation's usual fees, which may vary according to the extent to which certain sectors contribute to littering, and shall not be financed from the accredited compliance organisation's reserves or provisions;

f) the accredited compliance organisation shall respond to any request from the Interregional Packaging Commission for transparency and explanations regarding these financial commitments.]

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 referred to 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, in accordance with the conditions laid down by the Interregional Packaging Commission under the accreditation procedure referred to in article 10;

9) provide a financial guarantee within 60 working days of concluding the contract referred to under 7);

10) undertake to enter into a contract, in accordance with article 10(2)(5), with any responsible company that is subject to the take-back obligation and that so requests it;

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 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:

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

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Art. 14. If the take-back obligation relates to industrial and commercial packaging waste, the accredited compliance organisation should, in addition to the obligations laid down in article 12:

- 1) uniformly cover the whole of the Belgian territory in which the responsible companies place their products on the market, 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 rates;
- 4) take special measures in favour of small-scale industrial unpackers, i.e. the unpackers with fewer than 50 employees and the small 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, in accordance with article 10(2)(5), with any responsible company that is subject to the take-back obligation and that so requests it;
- 7) encourage as many industrial unpackers as possible to adopt selective collection, recycling and recovery by means of a fixed financial contribution towards the cost 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 percentage 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

Art. 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.

Art. 16. The government of each Belgian Region may appoint and remove from office an authorised representative, as well as his/her deputy, at the accredited compliance organisation for household packaging waste; this authorised representative shall ensure that the public service mission and the obligations imposed by this Agreement are fulfilled.

At their request, authorised 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 and records 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 authorised representative shall report to the Belgian Region concerned.

Section 3 – Obligations incumbent on sellers and consumers

Art. 17. 1. Any seller of packaged household goods, with the exception of small 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 sold.

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 who requests it,
- 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 (with energy recovery at waste incineration plants) the packaging waste himself 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

Art. 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 transport, grouped and sales packaging placed on the market, 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;
[2a) where household packaging waste is concerned, the total quantity of plastic carrier bags placed on the market, expressed in kilograms and number of units, categorised into one-way and reusable packaging, and further subdivided into the categories determined by the Interregional Packaging Commission, for the purpose of implementing the Belgian Regions' policy on plastic carrier bags and complying with the Regions' European reporting obligations;]
- 3) the total quantity of packaging waste, per material, that is collected, recycled, recovered, incinerated with or without energy recovery and landfilled;
- 4) the total quantity, by weight and by volume, per packaging material, of goods placed on the market in one-way packaging;
- 5) the total quantity, by weight, per packaging material and per goods type, of goods placed on the market 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 terms and conditions of 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), (2a), (3), (4) and (5) of this article, for each of its contracting parties. The accredited compliance organisation may present the information required under paragraph 1(3) of this article in aggregated form 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 provide the Interregional Packaging Commission, before 31 May of each year, with any information it requests concerning the collection and treatment of household packaging waste and concerning their various contractual arrangements 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 yet have or could not obtain by simply asking the competent regional administrations.

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Art. 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 responsible companies that have contracted with the accredited compliance organisation in accordance with 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 percentages collected, recycled, recovered and disposed of;
- 3) the financial resources made available by each responsible company that has contracted with the accredited compliance organisation in accordance with article 8;
- 4) the financial data used to calculate contributions.

Art. 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”.

Art. 21. If any logo or text indicating fulfilment of the obligations arising from the present 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.

Art. 22. Sellers, with the exception of small 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 companies, 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

Art. 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 Belgian 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, except in the case of leave for special assignment, continue to be governed by those provisions of the articles of association applicable to them, with the exception of the following paragraphs. 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.

The decision-making body shall approve the work programme of the Permanent Secretariat each year. It shall draw up a job description and set the annual objectives to be achieved by the Director and the departmental managers of the Permanent Secretariat. The Director and the departmental managers of the Permanent Secretariat shall be evaluated annually by the decision-making body based on the objectives set for them. These evaluations shall be notified to the administration that specifically seconded these staff members.

The procedures for the annual evaluation of the Director and the departmental managers of the Permanent Secretariat shall be laid down in the standing rules referred to in paragraph 3, after negotiation with the representative trade unions in the committees set up for this purpose.]

3. The Permanent Secretariat has 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 policy coherence 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 Chair represent the Interregional Packaging Commission in legal proceedings. In cases of extreme urgency, the Director is authorised to act alone.

[Agreement 05.03.2020 - entry into force 03-09-2020]

Art. 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 Chairperson from within their midst. The Chair 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.

Art. 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.

Art. 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 discharge their obligations;
- 3) monitor the budget of, and the fees charged 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 placed on the market in each Belgian Region, and the specific reference figures on the weight of one-way packaging that is annually placed on the market 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 by another party vis-à-vis the accredited compliance organisation, as provided for in article 8, and specify the terms and conditions of this representation;

12) specify the terms and conditions of 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 be responsible 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 attend the above-mentioned meetings. The Interregional Packaging Commission shall take the minutes of these meetings, if so requested.

[6. The decision-making body of the Interregional Packaging Commission shall grant the exemption referred to in article 3(4).] **[Agreement 02.04.2015 - entry into force 01.07.2015]**

Art. 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 the present Cooperation Agreement on legal or factual grounds;
- 3) the way in which the accredited compliance organisation carries out 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

Art. 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 recycling and recovery 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

Art. 29. 1. Without prejudice to the powers of officers in 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 police officers of the Criminal Investigation Department and shall take an oath in that capacity. They may be assisted by the regular police. Their official 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

Art. 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 attend 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

Art. 31. [1. The 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 time limit set pursuant to 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 3,636.25.

The 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 time limit set pursuant to 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 3,636.25 per responsible company that has entrusted its obligation to this legal entity. The total amount of the administrative fine may not, however, exceed EUR 36,362.50.

2. The 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 727.25 for each tonne or part-tonne of packaging waste that has not been recovered or incinerated at waste incineration plants with energy recovery within the prescribed time limits, and
- 2) EUR 1,454.50 for each tonne or part-tonne of packaging waste that has not been recycled within the prescribed time limits.

The total amount of the administrative fine may not, however, exceed EUR 36,362.50.

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

3. The 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 the first paragraph of article 30 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 727.25 for each day that the measures are not taken, counting from the day after the warning was received, unless the warning itself specifies a later date for the fine to take effect.

The total amount of the administrative fine may not, however, exceed EUR 14,545.00.

4. The 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 727.25.

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 referred to in article 32 or following the imposition of an administrative fine, the amounts mentioned in this article shall be doubled.]

[Agreement 05.03.2020 - entry into force 03-09-2020]

Section 4 – Penal provisions

Art. 32. 1. Any responsible company that has not entrusted its obligations to a legal entity in accordance with article 4(2), and that does not comply with the provisions of article 4, 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 in accordance with article 7(1), and that fails to fulfil the take-back obligation in article 6, 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 in accordance with 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 in accordance with 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 monitoring 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

Art. 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/her opinion, the offence is sufficiently serious to warrant criminal prosecution. If he/she believes this to be the case, he/she shall send his/her official report to the Public Prosecutor. He/she shall also send a duplicate copy to the offender.

If the reporting officer holds that the offence is insufficient to warrant criminal prosecution, he/she shall send his/her assessment, together with a copy of the monitoring 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/her 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/her 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/she shall also send a copy of his/her official report to the offender.

3. If the reporting officer is not a member of the Interregional Packaging Commission, he/she shall send a copy of his/her 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/she wishes to institute criminal proceedings or, alternatively, that he/she wishes to enforce article 216a or article 216b of the Code of Criminal Procedure.

5. If the Public Prosecutor announces, within the six-month period, that he/she wishes to bring proceedings or that he/she 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/she does not wish to bring criminal 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/her 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/she 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 soon as a decision is taken to impose an administrative fine under article 34. If a criminal court has given a final and binding judgment on the criminal offence, an administrative penalty may no longer be imposed.

Art. 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/her defence within the period that they shall specify. The offender shall be granted a hearing if he/she 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 into 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 against the decision to impose an administrative fine. The appeal is lodged by means of an *inter partes* application in accordance with articles 1034a et seq. of the Belgian Judicial Code. The court at Brussels shall have territorial competence. The appeal must be lodged within three months of service or notification of the decision. The right to bring an appeal shall lapse after this deadline. 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 temporarily transfer the paid fine into the account of the "Caisse des dépôts et consignations" (Deposit and Consignment Office), pending the final ruling. The Court of First Instance in Brussels is, however, empowered to suspend enforcement of the decision to impose the fine against which appeal was taken, if such enforcement 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

Art. 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 from each Belgian Region, duly appointed by their respective governments.

The running 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 procedure before this court shall be followed pursuant to the 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.

Art. 36. The Cooperation Agreement of 30 May 1996 on the prevention and management of packaging waste is hereby repealed.

Art. 37. The present Cooperation Agreement shall come into force on 1 January 2009.

Any packaging prevention plan within the meaning of article 4 that was approved before the present Cooperation Agreement comes into force shall remain applicable for the period specified.

Any accreditation within the meaning of article 10 that was granted before the present Cooperation Agreement comes into force, and that does not comply with the provisions of the present 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, 4 November 2008.

Minister-President of the Flemish Government,
K. PEETERS

Flemish Minister for Public Works, Energy, Environment and Nature,
H. CREVITS

Minister-President of the Walloon Government,
R. DEMOTTE

Walloon Minister for Agriculture, Rural Affairs, Environment and Tourism,
B. LUTGEN

Minister-President of the Brussels-Capital Region,

C. PICQUE

Minister of the Government of the Brussels-Capital Region, responsible for Environment,
Energy, Water Policy and Tourism,

E. HUYTEBROECK

[ANNEX I] [Agreement 02.04.2015]

**[ILLUSTRATIVE EXAMPLES FOR THE CRITERIA REFERRED TO IN ARTICLE 2(1)] [Agreement
02.04.2015]**

[Illustrative examples for criterion (i)]

Packaging:

- Sweet boxes;
- Film overwrap around a CD case;
- Mailing pouches for catalogues and magazines (with a magazine inside);
- Cake doilies sold with a cake;
- Rolls, tubes and cylinders around which flexible material (e.g. plastic film, aluminium, paper) is wound, except rolls, tubes and cylinders intended as parts of production machinery and not used to present a product as a sales unit;
- Flower pots intended to be used only for the selling and transporting of plants and not intended to stay with the plant throughout its life time;
- Glass bottles for injection solutions;
- CD spindles (sold with CDs, not intended to be used as storage);
- Clothes hangers (sold with a clothing item);
- Matchboxes;
- Sterile barrier systems (pouches, trays and materials necessary to preserve the sterility of the product);
- Beverage system capsules (e.g. coffee, cacao, milk) which are left empty after use;
- Refillable steel cylinders used for various kinds of gas, excluding fire extinguishers.

Non-packaging:

- Flower pots intended to stay with the plant throughout its life time;
- Tool boxes;
- Tea bags;
- Wax layers around cheese;
- Sausage skins;
- Clothes hangers (sold separately);
- Beverage system coffee capsules, coffee foil pouches, and filter paper coffee pods disposed of together with the used coffee product;
- Cartridges for printers;
- CD, DVD and video cases (sold together with a CD, DVD or video inside);
- CD spindles (sold empty, intended to be used as storage);
- Soluble bags for detergents;
- Grave side lights (containers for candles);
- Mechanical quern (integrated in a refillable recipient, e.g. refillable pepper mill).

Illustrative examples for criterion (ii)

Packaging, if designed and intended to be filled at the point of sale;

- Paper or plastic carrier bags;
- Disposable plates and cups;
- Cling film;
- Sandwich bags;
- Aluminium foil;
- Plastic foil for cleaned clothes in laundries.

Non-packaging:

- Stirrer;
- Disposable cutlery;
- Wrapping paper (sold separately);
- Paper baking cases (sold empty);
- Cake doilies sold without a cake.

Illustrative examples for criterion (iii)

Packaging:

- Labels hung directly on or attached to a product.

Part of packaging:

- Mascara brush which forms part of the container closure;
- Sticky labels attached to another packaging item;
- Staples;
- Plastic sleeves;
- Device for measuring dosage which forms part of the container closure for detergents;
- Mechanical quern (integrated in a non-refillable recipient, filled with a product, e.g. pepper mill filled with pepper).

Non-packaging:

- Radio frequency identification (RFID) tags.] [**Agreement 02.04.2015 - entry into force 01-07-2015**]