# COMMISSION DECISION

## of 15 September 1999

## confirming the measures notified by Belgium pursuant to Article 6(6) of Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste

*(notified under document number C(1999) 2919)*

**(Only the Dutch text is authentic)**

**(Text with EEA relevance)**

(1999/652/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 94/62/EC of the European Parliament and the Council of 20 December 1994 on packaging and packaging waste [1], and in particular Article 6(6) thereof,

Having consulted the Committee set up by Directive 94/62/EC,

Whereas:

### I. PROCEDURE

### 1. Directive 94/62/EC

Directive 94/62/EC, based on Article 95 (ex Article 100a) of the Treaty, aims to harmonise national measures concerning the management of packaging and packaging waste in order to prevent any impact thereof on the environment or to reduce such impact, thus providing a high level of environmental protection, and to ensure the functioning of the internal market and to avoid obstacles to trade as well as distortions and restrictions of competition within the Community. To this end, Article 6(1) of the Directive lays down, *inter alia*, quantified targets to be achieved by Member States for recovery and recycling of packaging waste.

Article 6(1)(a) establishes that, no later than 30 June 2001, between 50 % as a minimum and 65 % as a maximum by weight of the packaging waste will be recovered. Pursuant to Article 6(1)(b), within this general target, and within the same time limit, between 25 % as a minimum and 45 % as a maximum by weight of the totality of packaging materials contained in packaging waste will be recycled, with a minimum of 15 % by weight for each packaging material.

Article 6(6) introduces a monitoring procedure to ensure coherence between the different strategies chosen by Member States, particularly with a view to ensure that targets set in one Member State do not hinder compliance by other Member States with the Directive or represent distortions of the internal market.

Under that provision, the Commission is to confirm such measures after appropriate verification.

### 2. The measures notified

On 13 July 1996 Belgian authorities notified to the Commission, in the context of the procedure established by Council Directive 83/189/EC [2], a draft Cooperation Agreement on the prevention and management of packaging waste (notification 96/240/B).

In Belgium, the Federal State has only competence to transpose Directive 94/62/EC as regards product-related issues (such as, for instance, Article 9 and Annex II). The fixing of targets for recovery and recycling of the packaging materials contained in the packaging waste, as laid down in Article 6 of Directive 94/62/EC, comes into the exclusive competence of the regions. In order to ensure a coherent and consistent transposition and implementation of Directive 94/62/EC and in particular its Article 6, the three Belgian regions deemed it necessary to conclude the Cooperation Agreement on the prevention and management of packaging waste. This Agreement is a legally binding act and constitutes the transposition measure as regards Article 6 of Directive 94/62/EC. This Cooperation Agreement sets out the obligation for economic operators (packaging fillers and users, including importers in case the packaging was filled outside Belgium) to takeback and recycle/recover the packaging materials contained in the packaging waste put on the market (Article 6 of the Cooperation Agreement), either individually or by contracting a third party (Articles 7(1) of the Cooperation Agreement), and to achieve quantified targets for recycling and recovery (Article 3(2) of the Cooperation Agreement). Economic operators shall communicate to the Interregional Commission for Packaging how they intend to fulfil such an obligation. For household packaging, this is without prejudice of the rights of the competent public authorities in charge of waste collection in public streets. The Interregional Commission shall evaluate and, if appropriate, approve or refuse the way by which economic operators intend to fulfil their obligation set out in Article 6 of the Cooperation Agreement (Article 7(2) of the Cooperation Agreement). Economic operators can be relieved from the obligation to take back and recycle/recover packaging, by signing a

[1] OJ L 365, 31.12.1994, p. 10.

[2] OJ L 109, 26.4.1983, p. 8. Directive as amended by Directive 98/34/EC (OJ L 204, 21.7.1998, p. 37).

contract with a 'organisme agreé' (agreed body, Article 8 of the Cooperation Agreement) committing themselves to measures which will allow the agreed body to meet its recycling and recovery targets. Such agreed bodies have, besides achieving the quantified targets set out in Article 3(2) of the Cooperation Agreement, to fulfil a number of requirements concerning their legal and financial situation (Articles 9 to 15 of the Cooperation Agreement).

Its Article 3(2) sets out the following global minimum rates, by weight, of recycling and recovery of packaging waste:

— for 1998: 45 % recycling — 70 % recovery

— for 1999: 50 % recycling — 80 % recovery.

These recycling and recovery rates are to be achieved by the concerned economic operators, via the above-described system, in each of the three regions, i.e. Flanders, Wallonia and Brussels, both as regards household packaging waste and as regards industrial packaging waste.

An annex to the draft Cooperation Agreement was included in the notification, containing a summary of the measures taken in order to ensure compliance with the conditions set out in Article 6(6) of Directive 94/62/EC. These measures consist of:

— an analysis of the recovery capacities in relation to each packaging waste stream for the future years. This analysis is described in full in section II(a)

— a description of the provisions aimed at avoiding trade distortions. They consist of a progressive implementation of the legislation as well as of a permanent monitoring procedure, to be exerted by the Interregional Commission for Packaging and by each individual Regional Government, which shall supervise the setting up of the necessary collection infrastructures. A periodical control is also foreseen, in the context of both the yearly budget approval procedure for the agreed bodies as well as of the efficiency monitoring procedure of the recycling and recovery operators.

An analysis of the different waste streams was carried out in a study on the 'ecological standardisation of packaging in Belgium' which was transmitted to the Commission with the notification and was then circulated by the Commission to all other Member States.

On 14 October 1996 the Commission, commenting on the notified draft according to the procedure established by Directive 83/189/EEC, acknowledged that Belgium intended to make use of Article 6(6) of Directive 94/62/EC. Two Member States also reacted to the Belgian notification 96/2408. On 11 October 1996 France sent a detailed opinion on various aspects of the notified draft, mentioning *inter alia*, that the recycling and recovery rates foreseen in the draft Cooperation Agreement for 1999 required the procedure under Article 6(6) to be applied prior to the adoption of such targets. On 14 October 1999 also Finland commented on the notification but it did not touch on the issue of Article 6(6).

On 20 December 1997 responding to the detailed opinion of France, Belgium provided a detailed analysis of the present industrial capacities, demonstrating that the conditions set out in Article 6(6) were complied with.

The Cooperation Agreement was adopted by means of a Decree of 21 January 1997 of the Flanders Region, a Decree of 16 January 1997 of the Walloon Region and an Ordinance of 24 January 1997 of the Brussels Region (all published in the *Moniteur* of 5 March 1997). The final text of the measures was communicated to the Commission on 30 April 1997.

3. **Opinions**

Article 6(6) states that the Commission shall take a decision, after a verification of the measures in cooperation with Member States. To this end, the Commission consulted the Member States on this notification in the context of the Committee established by Article 21 of Directive 94/62/EC. This consultation procedure was deemed to be the most appropriate and no Member State expressed disagreement in this respect. A first exchange of views took place during the Committee meeting of 21 April 1997. Member States were then invited to send written comments to the Commission by 31 May 1997. Austria, Belgium, Denmark, France, Ireland, the Netherlands and the United Kingdom submitted written contributions. The matter was discussed again during the committee meeting of 4 September 1997.

No Member State contended that the Belgian measures could create internal market distortions or hinder compliance by other Member States with the Directive.

Several Member States made the point that a specific procedure, laying down the kind of information that Member States should provide when notifying a measure under Article 6(6), should be agreed on between them and the Commission. However, a number of difficulties were recognised, particularly pertaining to the assessment of recovery and recycling capacities which exist on the open international market and to the fact that it is not always possible to foresee whether certain measures will have as an effect that the maximum targets of Directive 94/62/EC will be exceeded.

France considered it difficult for the Commission and for Member States to take a position on this matter in the absence of the common methodology to be used for setting up the database (according to Article 12 of Directive 94/62/EC), since until that moment there will be difficulties in calculating the achieved targets. France therefore suggested to wait until the common methodology was available in order to take a decision on the notification from Belgium [1].

[1] As regards this question, it is established that the completion of databases is to be developed in line with Decision 97/138/EC to ensure compliance with the objectives of the Directive and the future setting up of a common methodology, but this is not a condition for confirming measures in the context of Article 6(6).

In the committee meeting there was a general consensus on the need to constantly monitor the effect of measures in order to identify and face possible trade distortions, should any arise. The United Kingdom indicated that providing information on economic aspects such as past levels and projections of reprocessing and of reprocessing capacities, of imports and exports of packaging waste, as well on historical prices over time would be useful. However, there was also general consensus on the fact that, in the procedure, a primary role was to be played by Member States which feared their compliance with the Directive would be hindered by measures adopted by other Member States. Should a measure exceeding the maximum targets of the Directive result in compliance problems for other Member States, it was primarily up to the latter to make this situation known so that appropriate countermeasures could be taken. The Commission invites Member States to submit immediately any information on adverse effects as set out in Article 6(6) on their territoy, whenever such a situation arises.

The United Kingdom also suggested that the effects of any higher target in existence should be examined during the planned review of Article 6(1) targets, to be completed no later than 1 January 2001.

## II. **ASSESSEMENT**

In view of the delay which would be caused if the Commission was to wait for the data in accordance with Commission Decision 97/138/EC [1], and taking into account the fact that no adverse effect concerning the elements mentioned in Article 6(6) has been reported, the Commission considers it unnecessary to postpone the present decision as suggested by France.

Article 6(6) of Directive 94/62/EC allows Member States to go beyond targets set in Article 6(1)(a) and 6(1)(b) if the Member State provides to this effect appropriate capacities for recycling and recovery. The measures must be taken in the interest of a high level of environmental protection and on the condition that they avoid distortions of the internal market and do not hinder compliance by other Member States with the Directive. Nor may they constitute an arbitrary means of discrimination or a disguised restriction on trade bettveen Member States.

In this case, Belgium has asked for a derogation from Article 6(1)(a) and (b).

The Commission has consulted the Member States and no objections to the Belgian measures have been raised.

(a) *Appropriate capacities for recovery and recycling*

This requirement is interpreted by the Commission as not imposing on Member States total self sufficiency with respect to recycling and recovery. Member States may also have recourse to capacities located in other Member States and third countries in order to fulfil their recycling and recovery targets. This, however, makes it difficult to carry out a precise quantification of available capacities. since recycling takes place in an open international market.

This criterion also serves the purpose of ensuring that measures taken in one Member State do not result in problems of compliance with the Directive for other Member States; therefore it should be seen in conjunction with the other criteria laid down in Article 6(6). In practice, compliance with this criterion is a signal for compliance with criteria (b) and (c) below. In particular, if targets are set exceeding those laid down in Article 6(1), it should be ensured that this is not to the detriment of collection and recycling schemes in other Member States.

As regards the Belgian notified measures, the information provided by the Belgian Government to the Commission and to the other Member States indicated that the exceeding of the targets of Directive 94/62/EC does not exert as a consequence any disturbance on the market for recyclates in other Member States. More specifically, the information provided by Belgium indicate that a recycling rate of 55 % of glass packaging had already been achieved in 1997 and that no capacity problems exist for absorbing the brown and green glass packaging waste arising. Recycling capacities are ensured by the existence in Belgium of a site capable of recycling 160 000 tonnes of glass per year as well as of five treatment sites which produce secondary material which is demanded both by Belgian and foreign recyclers. White glass is exported to foreign industries which are willing to buy such wastes.

Similarly, no capacity problems exist for metal packaging, given that 3,5 million tonnes of ferrous metals are consumed yearly in Belgium by the steel industry and 1,27 million tonnes of such materials are imported. As regards non ferrous metals, Belgium has a capacity exceeding 500 000 t/year.

For mechanical recycling of synthetic materials, Belgian authorities indicate the existence of several companies which altogether in 1997 already guaranteed the recycling of 50 000 tonnes of materials per year. The number of economic operators in this industry indicates a market which can further expand, particularly in the sectors of work roads, public amenities and sewage pipes. Belgium envisages achieving a mechanical recycling rate of 15 % for plastic packaging waste and geneting the remaining fraction to municipal waste incinerators or cement kilns. Energy recovery in cement kilns concerned 10 000 tonnes of plastic waste in 1997 but recovery capacity may be increased up to 60 000 to 80 000 tonnes per year. Sufficient recovery capacities also exist in municipal waste incinerators equipped with heat recovery devices as well as in steel production sites.

A recycling capacity of over one million tonnes per year already existed in 1997 for paper and board. Industry from this sector needs to import waste paper in order to be profitable, therefore no recycling capacity problems exist.

[1] OJ L 52, 22.2.1997, p. 22.

The Commission finds that Belgium provides appropriate capacities for recovery and recycling.

(b) *Potential distortions of the internal market*

The Commission has assessed the measures as notified by Belgium and finds that the recycling and recovery rates as well as the collection, system imposed on the operators by the legislation do not appear to cause, at present. distortions of the internal market. This Decision is without prejudice to the full application of Community Law, particularly as regards the free movement of goods. The consultation of the other Member States revealed that no Member State considers that the Belgian measure could lead to market distortions. Belgian authorities state that such risks do not exist in the light of the small size of the Belgian market and of the progressive application of the notified measures. In this respect, a monitoring body has been set up.

The Commission does not dispose of any other element showing that the Belgian recycling and recovery targets would lead to arbitrary market distortions.

(c) *Non-hindrance of compliance by other Member States with the Directive*

The purpose of this criterion is to avoid recycling and recovery capacities of Member States being filled by packaging waste collected in other Member States. This is particularly relevant for those Member States which have not yet started recycling of packaging waste on a large scale and where the infrastructure for collection is still to be set up or completed.

The assessment of the notified measures in the light of this criterion should primarily be made taking into account the opinion of the Member Startes whose compliance with the targets of the Directive could be endangered by measures set up in other Member States. No Member State expressed concern that compliance with the Directive could be hindered by the measures notified by Belgium. The Commission has either become aware or been made aware of any compliance problem caused by the Belgian measures to other Member States.

In assessing whether exceeding the recycling target by Belgium could result in recovery or recycling capacities in other Member States being exploited, thereby resulting in potential compliance problems by other Member States with the targets of the Directive, the Commission also takes into account the fact that Belgium only produces about 3 % of the packaging waste produced in the Community. Therefore, in the Commission's view, there is no real risk that this would result in problems for other Member States in complying with the targets of Directive 94/62/EC.

(d) *No arbitrary means of discrimination*

The Belgian measures apply without distinction to all packaging waste, whether arising from domestic or imported products. The Commission has consulted the Member States: the information obtained is not indicative of any arbitrary discrimination.

(e) *No disguised restriction on trade between Member States*

This concept refers to possible restrictions on imports of products from other Member States and to indirect protection of domestic production. Wastes are goods which fall under the scope of Articles 28 to 30 of the Treaty and consequently measures taken in the field of waste management are also capable, in certain circumstances, of restricting trade or protecting domestic production. The Commission therefore needs to assess whether undesired effects are avoided by setting targets in such a way that no indirect favouritism of domestic production or distribution occurs. However, the content of the Belgian measures and their application do not seem to allow for the conclusion that restrictions on trade are caused by the Belgian notified measures.

## III. **CONCLUSION**

The Commission, in the light of the information provided by Belgium and of the outcome of the consultation of the Member States described in the above considerations, concludes that.the measures notified by Belgium pursuant to Article 6(6) of Directive 94/62/EC should be confirmed since it has been verified that:

— appropriate capacities for recovery and recycling exist in Belgium,

— the measures do not lead to distortions of the internal market,

— the measures do not hinder compliance by other Member States with the Directive,

— the measures do not constitute an arbitrary means of discrimination,

— the measures do not constitute a disguised restriction on trade between Member States,

HAS ADOPTED THIS DECISION:

*Article 1*

The measures notified by Belgium which exceed the maximum recovery and recycling target laid down respectively in Article 6(1)(a) and (b) of Directive 94/62/EC are hereby confirmed.

*Article 2*

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 15 September 1999.

*For the Commission*

Ritt BJERREGAARD

*Member of the Commission*