II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 November 1999

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

(notified under document number C(1999) 3818)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(1999/823/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 of the Council of 20 December 1994 on packaging and packaging waste [1], and in particular Article 6(6) thereof,

Having verified, in cooperation with the Member States, that the conditions established in Article 6(6) are met,

Whereas:

I. PROCEDURE

1. Directive 94/62/EC

(1) 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 an 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.

(2) 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.

(3) 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.

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

2. The measures notified

(5) The Netherlands transposed Directive 94/62/EC by means of a Regulation (hereafter 'the Regulation'), published in the *Staatscourant* on 4 July 1997 and entered into force on 1 August 1997.

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

(6) Article 3 of the Regulation requires producers and importers, with effect from 1 August 1998, to recover 65 % of the packaging waste and to recycle 45 % of the totality of packaging materials contained in packaging waste, with a minimum of 15 % by weight for each packaging material. There are three possibilities to fulfil this obligation.

(a) Producer/importers may fulfil the obligation individually. In such case, Article 6 of the Regulation establishes that they notify the Minister on an individual basis how the packaging waste will be taken back, recovered and recycled.

(b) Producer/importers may jointly notify to the Minister how they intend to fulfil the obligations of Article 3 (Article 9 of the Regulation). This means that they demonstrate that they are affiliated to an organisation of producers and importers which fulfils these obligations on their behalf. They still have, individually, the obligation to achieve the recovery and recycling targets, but they are no longer subject to an individual obligation of notification to the Minister.

(c) Producers/importers who are signatory to a covenant between public authorities and economic operators of the packaging chain, in which binding.agreements have been made on the implementation of the obligations set out in the Regulation, are released from the individual obligations set out in Articles 3 to 9 of the Regulation (Article 2 of the Regulation). Although the obligation to fulfil the recovery and recycling targets remains valid, producers and importers signatory to the covenant are released from the notification and reporting obligations set out in the Regulation. In addition, producers/importers signatory to the covenant have to achieve higher recycling targets than those set out in the Regulation. The whole idea behind this option is to aim at higher targets at the lowest possible administrative cost.

(7) Article 2 of the Regulation has been implemented by means of the 'Packaging Covenant II' (hereafter 'the Covenant'). Certain provisions contained in the Covenant exceed the targets set out in Article 6(1) of Directive 94/62/EC and they are therefore the main subject of this Decision.

(8) A draft 'Packaging Covenant II' was notified to the Commission on 25 August 1997 (notification 97/0576/NL), in the context of the procedure established by Directive 83/189/EEC [1]. This Covenant consists of a general covenant and a number of subcovenants. The overall objective of the general covenant is to minimise the amount of packaging waste which needs to be disposed of. To this end, the Covenant establishes that by 30 June 2001 at least 65 % of packaging materials contained in the packaging waste must be recycled. Specific targets for each specific packaging material are laid down in the respective sub-covenants (85 % for paper, 90 % for glass, 80 % for metals, 27 % for plastics and 15 % for wood).

(9) Commenting on the notification of the draft covenant, on 26 November 1997, the Commission asked the Netherlands to confirm the intention to invoke Article 6(6) and to provide information on the expected recycling target as well as on the measures taken to avoid compliance problems of other Member States with the Directive, trade restrictions and market distortions.

(10) On 19 November 1997, the United Kingdom also commented on this notification, requiring 'additional information' seeking to demonstrate that the conditions laid down in Article 6(6) are complied with.

(11) The 'Packaging Covenant II' was signed on 15 December 1997.

(12) By letter of 18 March 1998, reacting to the comments of the Commission and the United Kingdom, the Netherlands informed that material recycling had already attained the overall rate of 51 % and that existing recycling capacities were considered to be largely sufficient in order to exceed the maximum recycling target set by the Directive. For further details, the Netherlands referred to a specific letter addressed to the Commission on 26 February 1998. In this letter, the Netherlands confirmed its intention to reach a recycling target of 65 % by the year 2001. The Netherlands pointed at the fact that recyclable packaging is subject to the rules on free circulation, which makes it difficult to exactly monitor which part of the existing Dutch recycling capacities is used for recycling Dutch waste as well as which part of Dutch waste is recycled abroad. The Netherlands referred to the discussion in the Article 21 Committee on 21 April 1997, where a general consensus was reached about the primary role which should be played by those Member States fearing that their compliance with the Directive would be hindered by measures which were adopted by other Member States. In any case, in order to give an insight about the existing recycling capacities in the Netherlands, the following table was provided, which shows that there is enough capacity to treat the additional packaging to be recycled by 2001.

[1] OJ L 109, 26.4.1983, p. 8. This Directive has been amended by Directive 98/34/EC (OJ L 204, 21.7.1998, p. 37).

	Glass	Paper/board	Metals	Plastics
Production capacity in NL in 1996 (Thousand tonnes)	820	2 824	6 000	3 000
Use of recyclates in 1996 (Thousand tonnes)	400	2 106	1 500	300
Quantity of packaging put on the market in 1996 (Thousand tonnes)	472	1 401	214	613
Quantity of packaging materially recycled in 1996 (Thousand tonnes)	338	865	126	67
Percentage of packaging materially recycled in 1996	72	62	59	11
Intended percentage of packaging waste to be recycled in 2001	90	85	80	35
Intended quantity of packaging waste to be recycled in 2001 (Thousand tonnes)	425	1 191	171	214
Additional quantity of packaging to be materially recycled in 2001 compared to 1996 (Thousand tonnes)	87	326	45	147

3. **Opinions**

(13) Article 6(6) states that the Commission shall take a decision, after a verification of the measures in co-operation 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. A discussion within this Committee was held on 6 July 1999. Member States were then invited to send written comments to the Commission by 20 July 1999.

(14) The United Kingdom pointed at the difficulties to assess in practice the effects of measures exceeding the maximum targets of Directive 94/62/EC but did not foresee any significant problem in relation to the Dutch notification. Italy stated that it is important that the Commission carries out the necessary analysis to make sure that the conditions laid down in Article 6(6) of Directive 94/62/EC are fulfilled. Provided the Commission agrees with the Dutch measures, Italy would not raise objections. Belgium requested the Commission to make sure that the comparability of Dutch targets with the targets of the Directive is ensured. In particular Belgium asked the Netherlands to clarify if the recycling targets set out in the Covenant also include reuse of packaging. The Netherlands confirmed that, in line with Directive 94/62/EC, its recycling targets do not include the reuse of packaging. In conclusion, no Member State contended that the Dutch measures could create internal market distortions or hinder compliance by other Member States with the Directive.

II. **ASSESSMENT**

(15) 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 between Member States.

(16) In this case, the Netherlands have asked for a derogation from Article 6(1)(b).

(17) The Commission has consulted the Member States and no objections to the Dutch measures have been raised.

a) **Appropriate capacities for recovery and recycling**

(18) 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.

(19) This criterion serves also 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.

(20) As regards the Dutch notified measures, the information provided by the Dutch 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.

(21) More specifically, the information provided by the Netherlands and summarised in the above table indicate that a recycling rate of 72 % of glass packaging, 62 % of paper/board packaging, 59 % of metal packaging and 11 % of plastic packaging had already been achieved in 1996 and that no capacity problems exist for absorbing additional quantities of packaging to be materially recycled in 2001. The present production capacity in these sectors allows to considerably increase the recycling rates of packaging without having to necessarily use recycling capacities located outside the Dutch territory.

(22) The Commission finds that the Netherlands provides appropriate capacities for recycling.

b) **Potential distortions of the internal market**

(23) The Commission has assessed the measures as notified by the Netherlands and finds that the recycling rates laid down in the Covenant 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 Dutch measure could lead to market distortions.

(24) The Commission does not dispose of any other element showing that the Dutch recycling targets would lead arbitrarily to market distortions.

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

(25) The purpose of this criterion is to avoid recycling and recovery capacities of Member States being filled up 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.

(26) The assessment of the notified measures in light of this criterion should primarily be made taking into account the opinion of the Member States 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 the compliance with the Directive could be hindered by the measures notified by the Netherlands. The Commission has not either become aware or been made aware of any compliance problem caused by the Dutch measures to other Member States.

(27) In assessing whether exceeding the recycling target by the Netherlands could result in 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 the Netherlands produce in total less than 5 % of the packaging waste produced in the Community. Therefore, in the Commission's view, taking also into account the high recycling rates already achieved in the Netherlands, 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**

(28) The Dutch 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**

(29) 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 unwished effects are avoided by setting targets in such a way that no indirect favorisation of domestic production or distribution occurs. However, the content of the Dutch measures and their application do not seem to allow for the conclusion that restriction on trade are caused by the Dutch notified measures.

III. **CONCLUSION**

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

— appropriate capacities for recycling exist in the Netherlands,

— 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 the Netherlands which exceed the maximum recycling target laid down in Article 6(1)(b) of Directive 94/62/EC are hereby confirmed.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 22 November 1999.

For the Commission
Margot WALLSTRÖM
Member of the Commission