

WE **W**ILLEM **A**LEXANDER,  
BY THE GRACE OF GOD, KING  
OF THE NETHERLANDS,  
PRINCE OF ORANGE-NASSAU,  
ETC. ETC. ETC.

1. -----IND- 2014 0336 NL- EN- ----- 20140807 --- --- PROJET  
DRAFT DATED 8 July 2014

**Decree of**

**laying down rules for packaging and packaging waste (Packaging Management Decree 2014)**

Upon the proposal of the State Secretary for Infrastructure and Environment of , No IenM/BSK- , General Directorate of Administrative and Legal Affairs;  
Having regard to Directive No 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (OJ (EC) 1994, L 365), most recently amended pursuant to Directive No 2013/2/EU of the European Commission of 13 February 2013 (OJ (EU) 2013, L 37) and Articles 9.5.2(1), 10.41 and 15.32 of the Environmental Management Act;  
Having heard the opinion of the Advisory Section of the Council of State (recommendation of , No);  
In light of the detailed report of the State Secretary for Infrastructure and Environment of, No IenM / BSK-, General Directorate of Administrative and Legal Affairs;

Hereby decree as follows:

**§ 1. Definitions**

**Article 1**

1. In this Decree and the provisions enacted pursuant to it, the following terms shall have the meanings indicated for each:
  - a. packaging: all products, produced of material whatsoever, which can be used for the enclosing, protection, transshipment, delivery and offering of other products, from raw materials to finished products, across the entire path from the manufacturer to the user or consumer, including any disposable articles used for these purposes, where packaging is deemed to be exclusively sales or primary packaging, combination or secondary packaging, and dispatch or tertiary packaging, and
    - 1°. where products shall be deemed to be packaging if they meet the aforementioned criteria, regardless of any other functions that the packaging might fulfil, unless the product is an integral part of another product and it is necessary to contain, support or store that product during its lifespan, and all its components are intended to be used, consumed or eliminated together;
    - 2°. where products designed and intended to be filled at the point of sale, as well as disposable articles that are sold in filled condition, or that are designed and intended to be filled at the point of sale, shall only be deemed to be packaging if they fulfil a

- packaging function, and
- 3°. where the components of a packaging and the associated components, incorporated into the packaging, shall be deemed to be part of the packaging into which they have been incorporated, and where the associated components suspended from or attached to a packaged product and which have a packaging function, shall be deemed to be packaging, unless they are an integral part of such product and all the components are intended to be consumed or eliminated together;
- b. sales or primary packaging: packaging which is designed such that it constitutes a sales unit for the end-user or consumer at the point of sale;
  - c. combination or secondary packaging: packaging that is designed such that designed that it constitutes a collection of several sales units at the point of sale, whether or not these are sold as such to the end-user or consumer, or serves only to refill the shelves at the point of sale and that can be removed from the product without affecting its properties;
  - d. dispatch or tertiary packaging: packaging which firstly is designed that the transshipment and the transport of a number of sales units or combination packaging is facilitated in order to prevent physical damage due to loading or transport, not including road, rail, ship or air containers;
  - e. offering on the market: providing packaging for purposes of distribution, consumption or use on the market in the context of a commercial activity, with or without payment;
  - f. placement on the market: offering a product on the market commercially for the first time;
  - g. manufacturer or importer: any person who:
    - 1°. places substances, preparations or other products on the market in a packaging;
    - 2°. commercially imports substances, preparations or other products in a packaging and disposes of the packaging;
    - 3°. commercially instructs another to provide the packaging of substances, preparations or other products with its name, logo or brand;
    - 4°. places a packaging on the market which is intended to be added to substances, preparations or other products to be provided to the user;
  - h. Packaging Directive: Directive No 94/62/EC of the European Parliament and of the Council of the European Union of 20 December 1994 on packaging and packaging waste (OJ (EC) 1994, L 365);
  - i. recycling: the reprocessing of waste materials in a production process for the original purpose or for other purposes, including organic recycling but not including energy recovery;
  - j. beverage cartons: packaging suitable for the packaging of liquid foodstuffs, at least 70 % of which consists of paper and cardboard, and the remainder of another material or other materials;
  - k. Act: Environmental Management Act.

2. The packaging as referred to in Annex I to the Packaging Directive shall automatically be deemed to be packaging as referred to in Paragraph 1(a) to (d).

3. The requirements imposed by or pursuant to this Decree shall apply without prejudice to the provisions of or pursuant to the Commodities Act (Packaging and Consumer Articles) Decree and the provisions of binding Decisions of the Council, of the European Parliament and of the Council jointly, or of the European Commission on materials and articles intended to come into contact with foodstuffs.

## **§ 2. Requirements for packaging and prevention**

### **Article 2**

1. It shall be prohibited to offer a packaging on the market in the EU or to have it available to that end:
  - a. whose total concentration of lead, cadmium, mercury, hexavalent chromium or compounds thereof in that packaging or in a packaging component is more than 100 ppm by weight;
  - b. which contains a substance designated by ministerial regulation, or a quantity of a substance as determined pursuant to such regulation, and the processing of the packaging with such substance or with such quantity of substance may have harmful effects on the environment.
  
2. The first paragraph, under a, shall not apply to:
  - a. packaging produced from crystal glass as referred to in Council Directive No 69/493/EEC of the European Communities of 15 December 1969 on the approximation of the laws of the Member States relating to crystal glass (OJ (EC) L 326);
  - b. plastic crates and pallets complying with the requirements as contained in Decision No 2009/292/EC of the Commission of the European Communities of 24 March 2009 establishing the conditions for a derogation for plastic crates and plastic pallets in relation to the heavy metal concentration levels established in Directive No 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (OJ (EU) L 79);
  - c. glass packaging complying with the requirements of Decision No 2001/171/EC of the Commission of the European Communities of 19 February 2001 establishing the conditions for a derogation for glass packaging in relation to the heavy metal concentration levels established in Directive No 94/62/EC on packaging and packaging waste (OJ (EC) L 62).
  
3. If the manufacturer or importer states the type of packaging material on the packaging or on the label of the packaging, and uses abbreviations and numerical codes to do so, then Decision No 97/129/EC of the Commission of the European Communities of 28 January 1997 establishing the identification system for packaging materials pursuant to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (OJ (EC) L 50) shall apply.
  
4. The information as referred to in Paragraph 3 shall be clearly visible, readable and permanently recognisable even after the packaging has been opened.

### **Article 3**

1. It shall be prohibited to offer on the market in the EU a packaging which does not conform to Annex II of the Packaging Directive, or to have it available to that end.
  
2. Without prejudice to Paragraph 1, a packaging shall be designed and manufactured in such a manner that the production of scattered waste is prevented as far as possible.
  
3. Packaging shall automatically fulfil one or several requirements as contained in Annex II of the Packaging Directive or Paragraph 2 if it fulfils a specification as determined by ministerial regulation for each type of packaging or combination of

packaging for a particular product, to the extent that such specification relates to a specific requirement contained in Annex II of the Packaging Directive or to Paragraph 2.

4. In determining the specifications as referred to in Paragraph 3, one or several of the following principles shall be observed:

- a. a packaging shall be designed and manufactured such that recycling is facilitated;
- b. a packaging shall be designed and manufactured such that re-use of the packaging is possible, if the product to be packaged is suitable for that purpose;
- c. a packaging shall be designed and manufactured such that it prolongs the shelf life of the packaged product as far as possible;
- d. a packaging shall be designed and manufactured such that the weight of the packaging or of the combination of the packaging and the packaged product is as low as possible;
- e. as little packaging material as possible shall be used in the manufacture of a packaging;
- f. as much recycled material as possible shall be used in the manufacture of a packaging.

5. Without prejudice to Paragraph 3, packaging shall automatically be deemed to fulfil one or several requirements of Annex II of the Packaging Directive or of Paragraph 2 if it complies with a standard to be designated by the Minister, to the extent that such standard relates to a requirement of Annex II of the Packaging Directive or to Paragraph 2.

6. Certain unfilled packaging designated by ministerial regulation shall not be provided to end-users at no cost by a manufacturer or importer under the conditions specified in such regulation.

#### **Article 4**

1. Upon a properly justified request from the Minister, a manufacturer or importer shall provide the Minister, within a period specified in such request, with all necessary information and documentation to demonstrate compliance with Articles 2(1), (3) and (4), and Article 3(1), (2) and Paragraph 5.

2. In case a packaging does not comply with Articles 2(1), (3) and (4), and 3(1), (2) and (5), the manufacturer or importer of such packaging shall inform the Minister immediately thereof, and shall take all measures to make the packaging compliant. At the request of the Minister, the manufacturer or importer of a packaging that does not comply with the Articles as referred to in the previous sentence shall give full cooperation to the measures to be taken to make the packaging compliant with this Decree.

### **§ 3. Receipt, recycling and other waste management**

#### **Article 5**

1. The manufacturer or importer shall ensure the separate receipt or receipt and post-separation of packaging placed on the market by it in the Netherlands, and of the packaging imported by it that it has disposed of during that calendar year, at least to the extent necessary to fulfil the obligations arising from Articles 6 and 7.

2. The costs of separate receipt or receipt and post-separation of packaging shall be borne by the manufacturer or importer.

3. Notwithstanding Paragraph 2, the costs of separate receipt or receipt and post-separation of packaging constituting commercial waste shall be borne by the person who disposes of the associated waste.

## **Article 6**

1. The manufacturer or importer shall ensure that in each calendar year, of the total quantity of packaging either placed on the market in the Netherlands or imported and disposed of by it, during that calendar year, at least 75 per cent by weight is utilised, and at least 70 per cent by weight is recycled.

2. The manufacturer or importer shall ensure that in each calendar year, of the total quantity of packaging either placed on the market in the Netherlands by it or imported and disposed of by it, during that calendar year:

a. of plastic packaging, at least the following weight percentage is recycled:

1°. in 2015: 45 per cent by weight,

2°. in 2016: 46 per cent by weight,

3°. in 2017: 47 per cent by weight,

4°. in 2018: 48 per cent by weight,

5°. in 2019: 49 per cent by weight,

6°. in 2020: 50 per cent by weight,

7°. in 2021: 51 per cent by weight;

b. of wooden packaging, at least the following weight percentage is recycled:

1°. in 2015: 31 per cent by weight,

2°. in 2016: 33 per cent by weight,

3°. in 2017: 35 per cent by weight,

4°. in 2018: 37 per cent by weight,

5°. in 2019: 39 per cent by weight,

6°. in 2020: 41 per cent by weight,

7°. in 2021: 43 per cent by weight;

c. of the other material types, at least the following weight percentages are recycled:

1°. 90 per cent by weight of glass packaging,

2°. 75 per cent by weight of paper and cardboard packaging,

3°. 85 per cent by weight of metal packaging.

3. The first and second paragraphs shall not apply to a manufacturer or importer who adds packaging to a substance, preparation or additional product at the time when it is placed at the disposal of another person, to the extent relating to such packaging and to the extent that such packaging does not bear its name, logo or brand.

4. Without prejudice to Paragraphs 1 and 2(a), and if Paragraphs 1 and 2 is jointly implemented pursuant to Article 9(1), manufacturers and importers shall jointly ensure that for each calendar year at least a quantity, determined in terms of weight by ministerial regulation, of plastic packaging waste produced from households, is recycled.

## **Article 7**

The manufacturer or importer shall ensure that for each calendar year, of the total quantity of beverage cartons placed on the market in the Netherlands by it during that calendar year, at least the percentage as specified by ministerial regulation is recycled.

#### **§ 4. Reporting**

##### **Article 8**

1. The manufacturer or importer for whom the total quantity of packaging placed on the market by him or imported and disposed of by it is more than 50 000 kilograms annually, shall submit an annual report to the Minister, by 1 August of each year, about its implementation of Articles 3, 6, 7, 12 and 15 during the preceding calendar year.
2. The report as referred to in Paragraph 1 shall be accompanied by documents demonstrating the accuracy of the information in the report.
3. If the manufacturer or importer is part of a fiscal entity as referred to in Article 7(4) of the 1968 Turnover Tax Act and such entity places on the market or imports, and has disposed of, an annual quantity of packaging exceeding 50 000 kilograms, then such fiscal entity shall be deemed to comply with Paragraph 1.

#### **§ 5. Collective implementation and notification to collective implementing agency by processing and collecting companies**

##### **Article 9**

1. The manufacturers and importers may jointly implement the obligations as referred to in Articles 5, 6(1), (2) and (4), 7 and 8(1).
2. If Paragraph 1 is complied with, the obligations as referred to in Paragraph 1 shall not apply to:
  - a. a manufacturer or importer who pays the waste management fee due under a packaging agreement that has direct application pursuant to Article 15.36(1) of the Act, to a legal entity as specified in such agreement;
  - b. a manufacturer or importer who, in light of the quantity, in terms of weight, of packaging placed on the market by it, is not required under the agreement as referred to in Letter a to pay a waste management fee.
3. In the cases where Paragraph 2 applies, the obligations as referred to in Paragraph 1 shall be borne by the legal entity to which the waste management fee as referred to in Paragraph 2 is paid.
4. In the joint implementation as referred to in Paragraph 1 it shall be ensured that no trade barrier or distortion of competition as referred to in Article 7(1) of the Packaging Directive is produced.

##### **Article 10**

1. Any person as referred to in Article 10.40(1) of the Act shall report, with respect to the packaging component of the company waste delivered to it, the following information to the organisation responsible for the implementation of an agreement on a

waste management contribution fee for packaging that has been given direct application pursuant to Article 15.36(1) of the Act:

- a. the date of issue;
- b. the customary designation of the material type of the packaging;
- c. the quantity of packaging;
- d. the manner in which the packaging is utilised or eliminated.

2. The information as referred to in Paragraph 1 shall be exclusively used by the organisation as referred to in that paragraph for purposes of producing the report as referred to in Article 8.

3. A ministerial regulation shall lay down rules for the manner in which the obligation as referred to in Paragraphs 1 and 2 is to be implemented.

## **§ 6. Deposit on beverage packaging**

### **Article 11**

In this section, a beverage shall be understood to mean: a liquid intended for human consumption and primarily intended to be drunk.

### **Article 12**

1. Anyone who, in the exercise of its business or profession, provides a beverage in a packaging to another person, shall charge a deposit on such packaging.

2. The packaging as referred to in Paragraph 1 shall be accepted for return after use, with a refund of the deposit, at least by the person who provides a packaging of the same material type to another person in the context of its business or profession. The receipt shall take place at the location where such packaging is provided or in the immediate vicinity.

3. A person who provides a beverage to another person from a place of sale having a sales area of less than 200 m<sup>2</sup> may restrict the acceptance as referred to in Paragraph 2 to packaging that it itself has provided to another person from such place of sale.

### **Article 13**

The obligation as referred to in Article 12(1) shall not apply to:

- a. packaging of:
  - 1°. medicinal beverages, being a drug as referred to in Article 1(1)(b) of the Geneesmiddelenwet,
  - 2°. wine as referred to in Article 1(1), of the Drinking and Drinking Establishments Act, as well as a beverage obtained by alcoholic fermentation from the juice of fruits other than grapes, and which contains, exclusively or partly, ingredients from such fruits,
  - 3°. distilled spirits as referred to in Article 1(1) of the Drinking and Drinking Establishments Act,
  - 4°. mildly alcoholic beverages, being alcoholic beverages which, at a temperature of twenty degrees Celsius, consist of more than twelve and less than fifteen volume per cent of alcohol;
- b. beverage cartons;
- c. packaging that is filled with a beverage immediately prior to sale;

- d. packaging of beverages with a volume of 1 decilitres or less;
- e. packaging of beverages for which the manufacturer or importer is able to successfully demonstrate that less than 500 000 units of consumer packaging per year are provided to consumers in the Netherlands.

#### **Article 14**

A ministerial regulation specifies the amount of the deposit as referred to in Article 12(1). Such regulation may specify the amount of the deposit for each type of beverage packaging, or based on the volume of the beverage packaging.

#### **Article 15**

1. If the obligation as referred to in Article 12(1) applies, the manufacturer or importer shall provide the packaging with a statement about the deposit. The Minister may lay down requirements for the form and content of such statement.
2. The statement as referred to in Paragraph 1 shall be placed on the packaging in a clear and indelible manner.

### **§ 7. Final provisions**

#### **Article 16**

The Minister shall submit a report to Parliament, no later than in 2018, on the effectiveness and effects of this Decree.

#### **Article 17**

Any amendment to the Packaging Directive or the Decisions as referred to in Article 2(2)(b) and (c) respectively, and in Paragraph 3, shall take effect, for purposes of the application of the present Decree, from the date by which such amendment should have been implemented, unless a different date is determined by ministerial decree published in the Official Gazette [Staatscourant].

#### **Article 18**

With effect from 1 January 2022, Article 6(2)(a) and (b) shall be amended to read as follows:

- a. of plastic packaging, at least 52 per cent by weight is recycled;
- b. of wooden packaging, at least 45 per cent by weight is recycled;

#### **Article 19**

1. The Packaging, Paper and Cardboard Management Decree shall be repealed.
2. The Packaging, Paper and Cardboard Management Decree shall remain applicable to obligations with respect to calendar years that have elapsed prior to the repeal of that Decree.
3. Article 6(2)(a) and (b), as amended pursuant to Article 13, shall not apply to obligations with respect to calendar years that have elapsed prior to 1 January 2022.



**Article 20**

The Articles of this Decree shall enter into force on a date as determined by Royal Decree, which may be different for the various Articles or parts thereof, such that Articles 11 to (15) shall not take effect earlier than one year from the date of publication of the Official Journal in which the Royal Decree laying down the date of entry into force of those Articles has been published.

**Article 21**

This Decree shall be cited as: Packaging Management Decree 2014.

We order this Decree to be published in the Official Journal [Staatsblad] together with its associated explanatory memorandum.

THE STATE SECRETARY FOR INFRASTRUCTURE AND THE ENVIRONMENT,

## **EXPLANATORY MEMORANDUM**

### **I. General**

#### **1. Introduction**

This Decree lays down the Packaging Management Decree 2014 (below: the Decree). The Packaging Management Decree 2014 replaces the Packaging, Paper and Cardboard Management Decree (below: Decree 2005), laid down on 24 March 2005<sup>1</sup>, which is repealed by the present Decree.

The Decree aims, as does the 2005 Decree implementing the EU Directive on packaging and packaging waste<sup>2</sup>(below: the Packaging Directive), to lay down rules to reduce the environmental burden of packaging and to ensure an effective management of packaging waste.

To that end, the Decree contains rules for the composition of packaging in order to prevent any harmful effects from such packaging in the waste stage, and to reduce the quantity of packaging waste as far as possible. The Decree also contains rules for the acceptance and processing of packaging that have become waste.

The Decree only relates to waste management of packaging. This is different from the 2005 Decree, which also related to waste management of paper and cardboard that was not used for packaging. The decision that the Decree should no longer relate to paper and cardboard that was not used for packaging is explained in paragraph 3 of this explanatory memorandum. This change in scope is also expressed in the short title of this Decree.

Paragraph 3.1 will describe the main points of the Decree. In that context, the differences between this Decree and the 2005 Decree will also be discussed.

#### **2. Rationale and necessity**

This section will discuss the rationale and need for the Decree, based on the questions from the Integral Policy and Legislation Assessment Framework [Integraal Afwegingskader voor beleid en regelgeving, IAK].

##### **2.1. Rationale**

For the period from 2008-2012, arrangements with respect to packaging waste management were made between the then Ministry of Housing, Spatial Planning and the Environment, the Association of Municipalities of the Netherlands (below: the Municipalities Association) and packaging businesses about the prevention, collection and recycling of packaging waste, and the financing of a system for the implementation of the 2005 Decree. After that period, new arrangements were made in the Framework Agreement between the Ministry of Infrastructure and the Environment (below: I and E), packaging businesses and the Municipalities Association, about addressing the issues of

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<sup>1</sup> OJ. 2005, 183.

<sup>2</sup> Directive No 94/62/EC of the European Parliament and the Council of the European Union of 20 December 1994 on packaging and packaging waste (OJ (EC) L 365), most recently amended pursuant to Commission Directive No 2013/2/EU of 13 February 2013 (OJ (EU) L 37).

packaging and scattered waste for the years 2013 to 2022<sup>3</sup>(below: the Framework Agreement) The Municipalities Association and the packaging businesses have made further arrangements in addition to the Framework Agreement, which have been laid down in the Addendum to the Framework Agreement on Packaging to address the issues of packaging and scattered waste for the years 2013 to 2022<sup>4</sup>. It was agreed in the Framework Agreement that the arrangements should be laid down in legislation as far as possible in order to enable enforcement action. This is the rationale for the drafting of the new rules for packaging. As announced before, paragraph 3.1 will address the decision to adopt a new Decree instead of amending the 2005 Decree.

## **2.2. Stakeholders**

As in the 2005 Decree, the manufacturer's responsibility forms the basis of the Decree. This manufacturer's responsibility is elaborated in the Decree in such a manner that a manufacturer or importer must ensure that packaging is produced in such a manner that the environmental burden caused by such packaging is as low as possible. This means that material used should be in proportion to packaged volume, the production of packaging waste should be prevented as far as possible, and that packaging should be produced in such a manner that its recycling is facilitated and any harmful environmental effect in the waste phase is limited (prevention).

Because of the manufacturer's responsibility, manufacturers or importers must also ensure appropriate acceptance and processing (including recycling) of packaging waste that has been by the manufacturer or importer placed on the market or that has been into the Netherlands by them and which they have disposed of. The manufacturer or importer must also demonstrate, by means of a report, the manner in which it has complied with certain obligations of the Decree. The manufacturers and importers shall bear the financial responsibility for the performance of these obligations. Current practice at the time of the 2005 Decree has shown that the obligations for acceptance and processing were implemented collectively by an organisation incorporated for that purpose. With the Decree of 9 January 2013<sup>5</sup>amending the 2005 Decree, the option of collective implementation has been included in the latter Decree. The option of collective implementation has also been included in the present Decree. This enables holding collective implementing organisations accountable for their implementation of certain obligations arising from the Decree in an enforcement context.

Municipalities are required, pursuant to Article 10.21 of the Environmental Management Act (below: EMA), to collect household waste, including packaging waste produced in households. Because of the financial responsibility of manufacturers and importers for the acceptance and processing or recycling of packaging waste, it has been laid down in the Framework Agreement that municipalities should be paid a fee by manufacturers and importers for certain activities such as collection of domestic packaging waste.

The Framework Agreement also lays down that with effect from 1 January 2013, packaging businesses should ensure a robust, adequate financing system for the implementation of the obligations included in the Decree 2005, such as for the collection and processing of packaging waste. The obligation of setting up a financing system relates to the abolition of the Packaging Tax on 1 January 2013.

For the implementation of the arrangements about the financing of the waste management structure, the Fast Moving Consumer Goods Packaging Foundation (SVF),

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<sup>3</sup> Official Journal 2012, No 14475.

<sup>4</sup> Annex 1 to Parliamentary Proceedings II 2012/13, 28 694, No 95.

<sup>5</sup> OJ. 2013, 24.

the Non-Food Packaging Foundation (SVN), Netherlands Business Packaging Foundation (BVNL), and the Packaging Waste Fund Foundation (StAV) have concluded a Waste Management Fee for Packaging Agreement (below: WMFPA). The WMFPA is intended to finance the entire waste management structure as agreed in the Framework Agreement, including the financing of collection and processing system for packaging. Under the WMFPA, the manufacturers and importers represented by them are required to pay a waste management fee. The WMFPA constitutes the financial basis for the implementation of the obligations of StAV.

On 28 June 2012, SVF, SVN and BVNL filed a request for a directly binding status for the WMFPA as referred to in Article 15.36 of the EMA.

The directly binding status was applied for with respect to the period from 1 January 2013 to 31 December 2017. On 17 December 2012, the Minister of I and E approved the request to grant directly binding status<sup>6</sup>.

Based on the directly binding status, StAV will implement the Framework Agreement and the now directly applicable WMFPA. The StAV implements (the relevant provisions of) the Decree with respect to the manufacturers and importers. To that end, the StAV collects the waste management fee from manufacturers who place more than 50 000 kg of packaging per year on the market in the Netherlands. This threshold was chosen for management reasons. Since in the implementation of the waste management activities (such as the collection and recycling of packaging waste) it often cannot be determined which manufacturer has placed the packaging on the market, the StAV carries out the obligations arising from the Decree on behalf of all manufacturers who have placed packaging on the market in Netherlands. However, the requirements for the design and manufacture of packaging so as to prevent packaging waste and to facilitate recycling shall at all times remain the responsibility of the individual manufacturer and importer. With respect to the prevention obligations, StAV only has an obligation to file a report on its implementation of those prevention obligations.

### **2.3. Problem**

The Decree aims, as does the 2005 Decree, at elaborating the requirements of the Packaging Directive. In addition, the Decree aims at resolving a number of specific problems, which will be explained separately below.

In the Framework Agreement that has been concluded, arrangements have been made to address the problems described below, and the desire to implement solutions to them.

#### **2.3.1. Insufficient attention to sustainability improvement**

In light of the need for a more efficient use of raw materials, the parties to the Framework Agreement have found that there was a need to make arrangements that would lead to a permanent improvement in sustainability of the packaging chain. These new arrangements should produce the largest possible improvement in sustainability across the chain from the production phase to the waste phase, as well as a closure of this chain so that it becomes self-sustaining. This will ensure a more prudent use of the resources needed for packaging.

More and better recycling, as well as improving the sustainability of the chain by better packaging designs and less wasted raw materials, are in keeping with the "From Waste to Resource" [Van Afval Naar Grondstof (VANG)] priority as expressed in the letter from

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<sup>6</sup> Official Journal 2012, 26296.

the State Secretary for Infrastructure and the Environment of 20 June 2013 and 28 January 2014 to the Lower House of Parliament<sup>7</sup>.

The Packaging Directive contains requirements for prevention. That Directive defines prevention as the reduction of the quantity and of the harmfulness for the environment of materials and substances contained in packaging, at production process level and at the marketing, distribution, utilisation and elimination stages. The Packaging Directive requires Member States to take preventive measures to prevent packaging waste. The Directive also requires Member States to ensure that only this packaging is placed on the market that meet the essential requirements as contained in the Directive.

These 'essential requirements' include requirements for the maximum permitted proportion of certain heavy metals, such as cadmium and lead, in packaging. The Packaging Directive also contains, in Annex II, requirements for the composition and manufacture of packaging that have a more open wording. Illustrative are the following two examples of essential requirements from Annex II to the Directive:

- Packaging shall be so manufactured that the packaging volume and weight be limited to the minimum adequate amount to maintain the necessary level of safety, hygiene and acceptance for the packed product and for the consumer;
- Packaging shall be designed, produced and commercialised in such a way as to permit its re-use or recovery, including recycling, and to minimise its impact on the environment when packaging waste or residues from packaging waste management operations are eliminated.

Because of the use of terms such as 'minimum amount' and 'minimise' in the wording of these essential requirements in the Packaging Directive, businesses as well as supervisory authorities for the rules for packaging cannot always determine whether a given packaging meets the essential requirements. As a consequence, it has been found in practice (Compliance with essential requirements for packaging 2012<sup>8</sup>) that the intended effect of prevention is not being achieved. The intended effect is that manufacturers and importers of packaging work together in a structural manner to improving the sustainability of the packaging by taking the relevant considerations into account from the production process stage. For that reason, the Framework Agreement contains arrangements aimed at producing sustainability improvements in the packaging chain. To this end, the Sustainable Packaging Knowledge Institution [kennisinstituut duurzaam verpakken] (KiDV) was established in late 2012, and has become operational in the first quarter of 2013. This is an independent institution composed of scientists and representatives of the National Government, of packaging businesses and of municipalities.

### **2.3.2. More recycling desired and possible**

In addition to sustainability improvements of product-packaging combinations, attention to and arrangements for packaging waste recycling remain a necessity. Packaging will always be placed on the market and lead to the production of waste. A packaging has various functions, namely the safe transport of products and the protection of products from an environmental and medical perspective, and environmental hygiene. But from an environmental perspective, reducing the environmental burden of packaging should be an objective pursued at all times.

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<sup>7</sup> Parliamentary Proceedings II 2012/13, 33 043, No 15 and No 28.

<sup>8</sup> Parliamentary Proceedings II 2012/13, 30 872, No 132, Annex 1 and on [www.ilt.nl](http://www.ilt.nl).

Packaging waste is still to some extent incinerated with energy recovery. Recycling of packaging materials is desirable in order to reduce the use of primary resources and prevent the production of waste as far as possible. This principle also follows from the prioritisation laid down in the Article 10.4(1) to the EMA for waste management (also referred to as "Lansink's Ladder").

The market value of the materials used is not always high enough for recycling to be undertaken without encouragement. For this reason, recycling targets have been included in the Decree. In the Netherlands these targets are higher than the targets of the Packaging Directive. For a number of packaging materials, the recycling targets of the Decree have been maintained at the same, already high level as those of the 2005 Decree. For plastic and wood, more ambitious targets have been laid down in the Framework Agreement. The collection of plastics from businesses, and particularly from households, can be improved. This applies both to a greater degree of prior separate collection and to later separation from residual waste, so that lower volumes of recyclable materials will remain in the residual waste. It has been found in practice that plastics can also be separated by means of post-separation with the same quality as plastic packaging waste produced by means of separation at the source.

The recycling of wood is already considerably higher in practice than the 25 % as required by the 2005 Decree. Of concern here is that recyclable packaging wood is being incinerated for energy recovery.

The recycling of wood is higher in practice than the 25 % required by the 2005 Decree. Of concern here is that this percentage is decreasing since 2009.

For beverage cartons, there are recycling options that are still hardly utilised in practice. The three signatories of the Framework Agreement have already made arrangements to address this.

A specific part of the Sustainability Agenda relates to the implementation of a pilot in collection and re-use of beverage cartons, as part of which a pilot will be carried out before 2014 in a representative number of municipalities with the collection and recycling of beverage cartons, involving an assessment of collection systems in both source-separating and post-separating dividing municipalities. The pilot will take place under KiDV supervision and will produce useful information about:

- a. the quantity and quality of collected recyclable beverage cartons achievable in practice;
- b. the costs related to the aspects referred to in Subparagraph a;
- c. environmental performance of collection and recycling, and
- d. the effects on other collection systems.

This information can be used to decide how beverage cartons should be managed.

### ***2.3.3. Freedom desired in choice of collection method for plastics***

Another principle in making the arrangements for the period from 2013-2022 was that the Ministry of I and E should control as far as possible for recycling targets, leaving the choice of appropriate means to the responsible parties.

The municipalities have indicated that they themselves wish to decide the manner of collection of packaging waste, e.g. by source separation or by post-separation from residual waste.

Businesses have indicated that they wish to decide for themselves whether to use deposits PET soft-drink bottles as a collection tool. In collection with deposits, the bottles are not refilled but shredded and recycled. There is a collection path for other plastic packaging waste, namely the Plastic Heroes system. It may be more efficient for the collection of PET soft-drink bottles to follow the Plastic Heroes collection route.

It has been agreed in the Framework Agreement that the responsible cabinet members for Economic Affairs and I and E would clear the deposit system provided that certain performance guarantees would be met. In a letter dated 11 June 2014 I have informed the Lower House of Parliament that I have found that not all the required performance guarantees were met, so that the deposit system cannot be cleared<sup>9</sup>.

The current deposit system on large soft-drink bottles was regulated through commodity board regulations for some time. In the Coalition Agreement "Building bridges"<sup>10</sup> it was agreed that the commodity boards would be abolished. After the abolition of the commodity boards, deposits are controlled privately by StAV.

In a letter dated 2007 from the Beverages Commodity Board, the commodity board has promised that the deposits would only be abolished with the approval of the responsible cabinet members.<sup>11</sup>

The Decree 2005 contained some articles about charging deposits for beverage packaging. Those provisions never came into force. The intention of those articles was that the Minister of I and E could introduce an obligation to charge deposits for beverage packaging if the packaging businesses would not meet the targets for recycling of plastic packaging waste. The deletion of the articles on deposits from the 2005 Decree is the subject of the (adopted) parliamentary motion from MPs Leegte, Van der Werff and De Mos<sup>12</sup>. The Framework Agreement expressly provides that these Articles are to be deleted. However, another parliamentary motion was adopted on 3 July 2014, from MPs Van Veldhoven, Cegerek, Dik-Faber, Van Tongeren and Ouwehand, to put the articles on deposits for beverage packaging from the 2005 Decree into the present Decree<sup>13</sup>.

#### **2.3.4. Problems with reporting**

In the context of reporting, manufacturers and importers file annually reports about their recycling of packaging waste. Manufacturers and importers had charged one organisation with this reporting: Nedvang. This organisation has fulfilled the obligation for the 2008-2012 period.

In the context of supervision and enforcement, these reports were assessed by the Human Environment and Transport Inspectorate (below: HETI). With respect to reports from the past few years, HETI has concluded, among other things, that the information about the proportions of collected and recycled commercial packaging waste (particularly plastic and glass) was often incomplete or unreliable.

In order to ensure high, dependable quality of the information about the quantities of collected and reused packaging waste, Nedvang has drafted an implementation and monitoring protocol (IMP) and a Packaging Certification Guideline (PCG)<sup>14</sup>. However, in order to obtain complete, reliable information, Nedvang still relied on the cooperation of the various businesses involved in the collection and processing of packaging waste that possessed this information and were able to provide it. During the

<sup>9</sup> Parliamentary Proceedings II 2013/14, 28 694, No 117.

<sup>10</sup> [www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2012/10/29/regeerakkoord](http://www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2012/10/29/regeerakkoord).

<sup>11</sup> Annex to Parliamentary Proceedings II 2013/14, 28 694, No 117.

<sup>12</sup> Parliamentary Proceedings II 2011/12, 30 872, No 101.

<sup>13</sup> Parliamentary Proceedings II 2013/14, 28 694, No 121.

<sup>14</sup> The IMP and PCG can be consulted at: <http://www.nedvang.nl/downloads>.

period from 2008 to 2012, it was found that the submission of this information by businesses was a difficult process with inadequate results. Manufacturers and importers raised this issue as early as 2008, and the Ministry of I and E tried in various ways to facilitate the acquisition of this information, however, without satisfactory results.

For this reason, the reporting issue was frequently discussed in recent years with both stakeholders and Parliament. The parties to the 2013-2022 Framework Agreement have therefore made arrangements to resolve this issue. Those parties have drafted a Basic Monitoring Document for Packaging<sup>15</sup> (below: Basic Document) which lays down the constraints and objectives for a transparent, verifiable, reliable and independent monitoring. These have been included in a ministerial regulation to enable HETI to enforce them. In addition to that, this Decree in order to enable the collective businesses to undertake appropriate reporting with reliable information, includes an Article requiring collecting and processing companies to report the details of their collection and processing of packaging waste released as commercial waste to StAV.

## **2.4 Objectives of the Decree**

This section explains the objectives that the Decree seeks to achieve with respect to the aforementioned specific issues.

### **2.4.1. Improvements in sustainability of packaging**

The essential requirements as included in Annex II of the EU Directive and in the 2005 Decree are worded in the form of target-related provisions, not elaborated into specific technical requirements. The Framework Agreement contains arrangements for improvements in the sustainability of the packaging chain, which allow these essential requirements to be concretised. It has been agreed that specific, accountable targets should be defined for packaging, which represent the attainable maximum from a perspective of sustainability improvements. These objectives will be incorporated in a Packaging Sustainability Agenda to be drafted by the KiDV. The Sustainability Agenda is structural in character, and will be updated regularly.

In order to achieve further sustainability improvements for packaging materials, the KiDV adopted the Packaging Sustainability Agenda in 2013. It includes specific, accountable targets based on the principles of re-use, reduce, recycling and renew. The Sustainability Agenda contains the components for defining the *highest attainable targets* with respect to use of raw materials, chain management and recycling, through:

- Prevention of waste of materials and more energy-efficient use of raw materials (Reduce);
- Raising the re-use percentage of packaging materials (Re-use);
- Recovery of packaging material (Recycle);
- Use of new materials with a lower environmental burden (Renew).

The Sustainability Agenda also defines measurable requirements for packaging combinations. It was agreed in the Framework Agreement that businesses will be working towards these objectives.

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<sup>15</sup> Annex to Parliamentary Proceedings II 2012/13, 30 872, No 148.



The KiDV has incorporated a system in the Sustainability Agenda which enables the highest attainable targets to be achieved together with the manufacturers and importers. For each sector as defined by the KiDV, consisting of a group of manufacturers and importers, sustainability improvement plans will be drafted by the relevant sector itself. This will be done on the basis of the undertakings in the Addendum.

The Knowledge Institution will develop a method for determining the highest attainable targets within each sector. Using this method and the associated tools, these sectors will then be able to make a baseline assessment and define their sector plans.

The KiDV will assess, with input from the scientific community and other knowledge institutions, the highest attainable targets so defined for packaging combinations, and decide on the basis of research whether these are truly the highest attainable targets. If they are not, then a different highest attainable target will be defined by the Knowledge Institution. This target will first be presented to the relevant businesses for comments. Individual manufacturers and importers will remain reasonable for the implementation of the essential requirements.

In order to concretise the essential requirements for certain packaging types in legislation, the Decree provides that a ministerial regulation will lay down specifications which will automatically be sufficient to meet the essential requirements pursuant to the Packaging Directive.

The targets as defined by the KiDV in the Sustainability Agenda will serve as the input to the technical specifications.

This will be decided based on aspects including the following:

- Packaging types that are easier to recycle;
- Packaging types with a larger proportion of recycled materials;
- Refill packaging leading to resource savings;
- Packaging that requires fewer resources (lighter packaging);
- Packaging of products that contain less water or air;
- Packaging that prolong product life;
- Packaging that reduces product waste, damage or loss;
- Packaging that produces less hindrance in the form of scattered waste.

A packaging that meets these specifications will be deemed to thereby comply with the requirements to which the specifications relate.

The Packaging Directive provides that a packaging meets the essential requirements if it has been designed and manufactured in accordance with European harmonised standards or national standards. A ministerial regulation will define the relevant national standards. Packaging that have been designed and manufactured in accordance with that standard will be deemed to comply with the essential requirements to which the standard relates. Then, a manufacturer or importer will only need to show that the product was developed in accordance with the standard in order to demonstrate compliance with the requirement to which the standard relates.

Manufacturers and importers will be expected to make permanent efforts to improve the sustainability of their packaging in terms of the essential requirements and the highest attainable targets that will be included in a ministerial regulation as specific technical specifications.

The aim of this part of the Decree is to arrive at a better, structural implementation of the essential requirements. This is done by concretely incorporating the technical

specifications in the regulation; they should be easy to verify so as to simplify the enforcement of the essential requirements. In this manner it will also be clear to manufacturers and importers how they can fulfil the essential requirements. The measurable rules to be laid down by the KiDV as the highest attainable target for the product-packaging combinations may serve as input to the technical specifications. Since this approach is a direct consequence of the Framework Agreement, it enjoys the support of the packaging sector.

#### **2.4.2. Higher targets for recycling of plastic and wood and pilot with beverage cartons**

The Decree defines the percentages of the total packaging quantity placed on the market that are to be recycled. Specific recycling percentages for the various material flows have also been incorporated in this Decree. In practice, the degree to which packaging can be recycled is rising continuously; in addition to that, ambitious targets can encourage innovations. Accordingly, higher targets have been agreed for plastic and wood than those of the 2005 Decree. The requirements for metal, glass and paper/cardboard have not been changed from the 2005 Decree.

The recycling targets are higher than the recycling targets included in the Packaging Directive. The Decree 2005 already included higher targets than those of the Directive. The targets have been defined for each material type as a percentage of the total quantity (in kton) placed on the market. For plastic packaging waste, there is a chain deficit. This means that the cost of achieving the targets is higher than the revenue gained from the recycled materials. The transition to a circular economy requires a gradual working towards a system in which the costs do not exceed the benefits. For that reason, arrangements have been made not only for sustainability improvements, but also, in the Framework Agreement, for raising the recycling targets for plastic, wood, and others, and to work on quality improvements for recycled plastics. The recycling targets so defined for the Netherlands is higher than those of the Packaging Directive. For a number of packaging materials, the recycling targets have been maintained at their high existing levels. For plastic and wood, more ambitious targets have been agreed.

For plastics, stability of supply of packaging waste in terms of both volume and quality is among the important factors. This provides both the municipalities and the market parties with a basis for investments and for creating a system for the collection, recycling and marketing of the relevant materials. At the time of signing of the Framework Agreement, the supply from households was approximately 85 ktons / year. This is the sum of the quantity that could be recycled from collected material plus the quantity of plastic deposit bottles.

The Framework Agreement contains arrangements for improving reporting, for raising the quality standards for recycled material, and for giving clearance, if desired, to the option of charging deposits for large PET soft-drink bottles. The latter option can have effects on implementing practice, where an absolute reduction in quantities of packaging waste (in ktons) is unwanted. Therefore, a target has been defined for plastic in addition to the recycling percentage, requiring a minimum quantity by weight to be recycled. This enables ensuring the amount of plastics being recycled. Further information about the determination of the quantity by weight is given in the per-article section of the explanatory memorandum for Article 6(4).

The quality requirements for recycled material are important for closing the resource chain, but also for an economically viable closure of the chain. A higher quality of recycled materials facilitates their use in new products and therefore increases their recycling value.

A working group has been set up for the purpose of reducing the unwanted situation for wood, namely the loss of recyclable wood packaging into energy recovery. Under the overall responsibility of the Ministry of I and E, in which representatives of the parties participate, it is examined which specific arrangements could be made to address and regulate the aforementioned unwanted situation.

As a specific component of the Sustainability Agenda, the three parties to the Framework Agreement have agreed that a pilot will be undertaken with the collection and re-use of beverage cartons, as part of which a pilot will be carried out before 2014 in a representative number of municipalities with the collection and recycling of beverage cartons, involving an assessment of collection systems in both source-separating and post-separating dividing municipalities. The pilot will take place under the supervision of the Knowledge Institution and will produce useful information about:

- a. the quantity and quality of collected recyclable beverage cartons achievable in practice;
- b. the costs related to the aspects referred to in Subparagraph a;
- c. environmental performance of collection and recycling, and
- d. the effects on other collection systems.

Based on the information from the pilot and the follow-up studies undertaken to translate the environmental performance and costs into a regular practical situation, a decision will be made as to whether the manufacturer's responsibility is to be extended with recycling of beverage cartons. The Decree already contains the required provisions, but the relevant article (Article 7) will not take effect until the results of the pilot are available and the State Secretary has arrived at a position.

The aim of this part of the amendment is that the new and higher targets as laid down in the Framework Agreement will be included and accordingly become enforceable.

#### **2.4.3. Articles about deposits**

In light of the parliamentary motion cited in Paragraph 2.3.3. of this explanatory memorandum, the Decree includes Articles about deposits in the Decree.

#### **2.4.4. Freedom of choice of collection method for plastics**

The Framework Agreement provides that both the municipalities and the packaging businesses shall have freedom of choice as to the means used to achieve the agreed targets for plastics. It has been agreed that the municipalities shall have the freedom to choose either source separation or post-separation. The Framework Agreement contains arrangements on the minimum quality of the material flows consisting of plastic packaging waste from households. These requirements are the same for both source separation and post-separation.

The Framework Agreement provides that packaging businesses shall be free to choose the method for the collection of large PET soft-drink bottles, provided that a number of performance guarantees are met. This arrangement cannot be elaborated at present since the packaging businesses have failed to meet the agreed performance guarantees.

#### **2.4.5. Role of processing and collecting companies in reporting**

This Decree is based on the principle of the manufacturer's responsibility. This responsibility extends to concerns submit reports on the performance of obligations. Manufacturers and importers themselves will often not undertake the collection and processing of packaging placed on the market by them once such packaging have become waste. In order to obtain reliable information about the collection and processing of packaging waste, it is necessary to involve the parties who undertake those activities. To that end, this Decree refines the reporting obligation as already in force pursuant to Article 10.40(1) of the EMA in terms of obtaining information about the collection and processing of packaging waste.

Pursuant to Article 10.40(1) of the EMA, parties who are entitled to collect, utilise or process waste are required to submit reports of the company waste or hazardous waste supplied to them. The Commercial Waste and Hazardous Waste (Reporting) Decree (below: Reporting Decree) lays down rules, pursuant to Article 10.41 of the EMA, with respect to the performance of this reporting obligation. The Reporting Decree does not ensure that the required information about the collection and processing (recycling and others) of packaging waste is obtained. For that reason, Article 10 of the present Decree refines the reporting obligation pursuant to Article 10.40(1), EMA to be specifically aimed at packaging waste. This reporting on packaging waste is intended only to enable manufacturers and importers to have complete, reliable reports submitted. The packaging waste report will therefore need to contain information only about the date of supply, quantity, material type and manner of utilisation or elimination of the packaging. No details of the eliminating party are required. Details of the eliminating party are not required so as to reduce the commercial sensitivity of the information supplied as far as possible.

Paragraph 3.5 of this explanatory memorandum addresses the nature of this new reporting obligation in more detail. Paragraph 4.3 of this explanatory memorandum discusses the relation between reporting on packaging as incorporated into the present Decree and that of the Reporting Decree.

## **2.5. Why are rules necessary?**

First of all, rules are necessary because the Packaging Directive already requires them. Article 22 of that Directive includes the requirement for Member States to enact the necessary statutory and administrative provisions to comply with the Directive. It is necessary to lay down in legislation the rules for prevention, collection and recycling, so that compliance can be monitored and enforced where necessary. The Framework Agreement contains some arrangements for these matters; however, it is important for a consistent implementation of the Packaging Directive and for enforcement that rules should be defined for the prevention, acceptance and recycling of packaging waste.

## **3. Main points of the proposal**

### **3.1. Reason for the new Decree**

This Decree corresponds to the 2005 Decree in many respects. Both Decrees serve to implement the Packaging Directive. The present Decree reflects the choice to adopt a

new Decree on packaging and packaging waste instead of amending the 2005 Decree<sup>16</sup>. There are various reasons why the choice was made to draft a new Decree.

For some subjects, the Decree does not contain rules where the 2005 Decree does. Some Articles of the 2005 Decree related also to paper and cardboard that was not used for packaging. As mentioned in the introduction to this explanatory memorandum, the Decree does not relate to paper and cardboard that was not used for packaging. Article 5 of the 2005 Decree provided for a re-use percentage for paper and cardboard not being packaging. That Article, however, has never come into force. The Packaging Directive does not require rules to be enacted for waste management relating to paper and cardboard. In the Netherlands, no distinction is made in processing methods between paper and cardboard originating from packaging and paper and cardboard from other sources. Both flows combined are recycled and monitored for reporting as a single category. Specifically for the reporting obligation in the Decree, the proportion originating from packaging waste will be defined administratively. In light of this practice, monitoring therefore relates to the overall flows, so that we obtain insight into the overall flows. There are no policy considerations that would require rules, such as an obligatory minimum paper and cardboard recycling percentage, for paper and cardboard that does not originate from packaging.

The draft of the Decree that was pre-published in the Official Gazette on 15 May 2014 did not contain any articles on deposits<sup>17</sup>. This non-inclusion of such articles was one of the reasons for drafting a new Decree for the management of packaging and packaging waste. Pursuant to the parliamentary motion cited above in Paragraph 2.3.3. of the general part of this explanatory memorandum, the present Decree nevertheless includes Articles on deposits. These Articles are nearly identical to the Articles on deposits as contained in the 2005 Decree. With respect to the (non-substantive) differences in the articles on deposits between this Decree and the 2005 Decree, please see the per-article section of the explanatory memorandum for Articles 11 and 12. For the aforementioned reasons, the decision to draft a new Decree was not reconsidered in light of the adoption of the parliamentary motion.

The requirement to charge a deposit applies to beverages in all types of packaging, not including beverage cartons, beverage packaging with a volume of 1 decilitres or less, and beverage packaging that is filled immediately prior to sale and intended to be consumed immediately after purchase, such as coffee that is served in a cup for consumption on site, e.g. at a kiosk. Certain other beverages and packaging types, as well as types of packaging that are placed on the market in relatively very low volumes are also exempt from the deposit requirement pursuant to Article 9. For the latter category a threshold of 500 000 units has been set. This aims at avoiding situations where a party who imports relatively low volumes of packaging faces the relatively high cost of setting up a deposit system compared to the low turnover. The same applies to the introduction of new beverages in relatively very small market segments. Packaging of medicinal beverages (such as cough syrups), wine, spirits and mildly alcoholic beverages with an alcohol content of more than twelve but less than fifteen is also specifically exempted from the deposit requirement (see the per-article section of the explanatory memorandum for Article 13).

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<sup>16</sup> The choice to draft a new Decree is in line with Guideline No 224 of the Legislative Guidelines [Aanwijzingen voor de Regelgeving].

<sup>17</sup> Official Journal 2014, 11354.

Deposits should be charged on packaging of beverages such as beer, soft drinks, water, juice or milk, but also e.g. dairy-based beverages, energy drinks, alcoholic mixed beverages, and health drinks. Salad dressings, oils, vinegar, etc. are not intended for drinking, so the definition of a beverage does not apply to them.

Article 6 of the 2005 Decree on notification has been repealed with effect from 1 October 2010<sup>18</sup>.

Article 7a of the 2005 Decree<sup>19</sup> on the provision of information by the Revenue Service to a collective implementing organisation has not been included in the present Decree. This provision related to a one-time provision of information that was needed in early [NUM1] to enable StAV to implement the WMFPA effectively. The explanatory memorandum to the aforementioned Decree of 9 January 2013 explains why this provision of information was important at the time.

In the 2005 Decree, the articles about prevention were found scattered throughout the decree<sup>20</sup>. The present Decree places the articles relating to prevention together in Articles 2 to (4).

The sections below will discuss the subjects in the Decree that are new in comparison to the 2005 Decree, as they relate to the desire to lay down parts of the Framework Agreement in the Decree.

### **3.2. Improvements in sustainability of packaging**

In order to achieve the envisaged sustainability improvement, the following agreements have been made:

An independent Knowledge Institution has been created for the promotion of structural reinforcements in the sustainability of the overall packaging chain. This Institution has drafted a Sustainability Agenda, which contains the components for defining the highest attainable targets with respect to resource use, chain management and recycling through:

- Prevention of waste of materials and more energy-efficient use of raw materials (Reduce);
- Raising the re-use percentage of packaging materials (Re-use);
- Recovery of packaging material (Recycle);
- Use of new materials with a lower environmental burden (Renew).

The Knowledge Institution will define the highest attainable targets for relevant product / packaging combinations. All the required knowledge will be utilised in defining the highest attainable targets. Wherever possible, these targets will be used as inputs to the specifications to be included in a ministerial regulation.

Since the specifications have the highest attainable targets as their input, a dynamic situation is produced. The available technology is subject to change, which implies that the highest feasible target will also change over the years. The Minister of I and E will be able to respond promptly to these developments by enacting ministerial regulations. Specifications will be defined for a wide range of packaging types. This will take place at different points in time. With a regulation, these stages can be adequately followed.

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<sup>18</sup> OJ. 2010, 324.

<sup>19</sup> Adopted with Official Journal 2013, 24.

<sup>20</sup> See e.g. Articles 3 and 12 of the 2005 Decree.

Manufacturers or importers can comply with the essential requirements for a certain packaging type by adhering to the specifications from the regulation. In the context of the reporting obligation, manufacturers and importers are required to indicate the manner in which they are complying with the essential requirements. If they adhere to the specifications from the regulation for their packaging, then they can simply refer to those in their reports. If a manufacturer or importer fulfils the essential requirements other than by adhering to the specifications, it will need to demonstrate this when requested by a supervisory authority. It will also need to indicate this in its report. If a manufacturer or importer adheres to a harmonised standard for its packaging with respect to a certain specific requirement, then it may demonstrate compliance with the relevant essential requirement by including a reference to such standard.

The Decree (Article 2(1)(b)) provides that certain substances designated by ministerial regulation must not be used in packaging (in certain volumes).

### ***3.3. Raising the targets for recycling of plastic and wood, and pilot with beverage cartons***

The Framework Agreement provides that certain targets for recycling will be raised. The new targets for plastic and wood have been incorporated in the Decree on the same footing. The additional target of recycling a certain quantity of plastic by weight has been added as an additional requirement. This raising of the recycling targets has been chosen since it gives rise to a requirement of more extensive recycling so that less plastic waste and wood will be incinerated. A ministerial regulation will include requirements, pursuant to Article 9.5.2(7) of the EMA, that recycled material must fulfil in order to be counted towards the percentages as referred to in Paragraphs 1 and 2 and the quantities as referred to in Paragraph 4 of that Article.

As a specific component of the Sustainability Agenda, the three parties to the Framework Agreement have agreed that a pilot will be undertaken with the collection and re-use of beverage cartons.

### ***3.4. Reporting obligation for collecting and processing companies***

In order to enable manufacturers and importers (i.e. StAV on their behalf) to fulfil the reporting obligation as contained in Article 8, an obligation has been included for processing and collecting companies of packaging waste to report the commercial packaging supplied to them. As indicated above, a reporting obligation for collecting and processing companies of commercial waste is already in force pursuant to Article 10.40(1) of the EMA. The Reporting Decree with all the exceptions contained in that Decree fails to ensure that all the relevant information about the collection and processing of packaging waste is obtained that is needed to submit complete, reliable reports as referred to in Article 8 of the present Decree.

The reporting obligation pursuant to Article 10.40(1) of the EMA applies to the legal entities referred to in Article 10.37(2)(a) and (b) of the EMA. These are essentially those legal entities that are entitled to collect, utilise or eliminate waste (see the per-article section of the explanatory memorandum for Article 10).

Article 10.40(1) of the EMA requires the report to be submitted to an entity as designated by the Minister of I and E. The National Waste Reporting Office [Stichting

Landelijk Meldpunt Afvalstoffen] in The Hague has been designated as such<sup>21</sup>. Reports on packaging waste should be submitted to StAV. StAV as the collective implementing agency is responsible for submitting the report. It is therefore important that StAV should have access to the relevant information about collection and recycling, so that StAV will be able to file complete, reliable reports with the Ministry of I and E.

#### **4. Relation to existing legislation**

##### **4.1. Relation to Environmental Management Act**

This Decree is based on Articles 9.5.2(1) 10.41 and 15.32 of the EMA.

Pursuant to Article 9.5.2(1) of the EMA, rules may be set to promote re-use, prevention, recycling and other utilisation, effective waste management, or otherwise in the interests of environmental protection, regarding the manufacture, importation to the Netherlands, use, possession, provision to other persons, receipt, collection, utilisation and elimination of certain substances, preparations or products or waste.

Article 10.41 of the EMA provides the basis for the enactment of rules in this Decree for the manner in which the reporting obligation pursuant to 10.40 is to be complied with. Paragraph 4.3 will discuss the relation between the reporting obligation included in the Decree and the Reporting Decree.

Article 15.32 of the EMA provides the basis for the articles about deposits for beverage packaging as incorporated in Paragraph 7 of the Decree.

The Decree relates to certain rules for waste as included in Chapter 10 of the EMA. Paragraph 10.4 of the EMA includes rules for the management of waste, including household waste. The aforementioned paragraph of the EMA defines the responsibilities of municipalities. The municipalities have an obligation to collect household waste.

##### **4.2. Elaboration in a ministerial regulation**

The Decree is based on Article 9.5.2(1) of the EMA and other provisions. Pursuant to Paragraph 7 of Article 9.5.2 of the EMA, detailed rules will be included in a ministerial regulation for some parts of the 2015 Decree. These are the following paragraphs or subparagraphs of Articles of the Decree:

- *Article 2(1)(a)*: A ministerial regulation lays down the manner in which the maximum permitted concentrations of the substances as referred to in Article 2(1) should be determined. Some ambiguity has arisen in practice as to whether the requirement applies to the entire packaging or only to the packaging component.
- *Article 6(1)(2) and (4)*: a ministerial regulation lays down (quality) requirements imposed which sorted material must fulfil in order to be counted towards the recycling percentages as referred to in Article 6(1) and (2) and the quantity as referred to in Article 6(4).
- *Article 8(1) and (2)*: a ministerial regulation includes requirements for the report on the performance of certain obligations of the Decree. At least one of the requirements will relate to the mandatory reporting form to be used.

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<sup>21</sup> Waste Delivery Notification Authority (Designation) Decree, Official Journal 2004, 242.



For some matters addressed by the Decree, there is an express provision of laying down detailed rules that will not be based directly on Article 9.5.2(7) of the EMA. This has been done to be able to determine in the Decree the scope of the competence to lay down more detailed rules. This concerns the following subjects:

- *Article 2(1)(b)*: substances designated in a ministerial regulation must not (in certain quantities) be used in packaging. Substances will possibly not be designated in the regulation until after the entry into force of the Decree. There is currently no reason to designate substances in this manner; this may change in future. That will depend on available technology, whether there are sufficient alternatives to the use of potentially environmentally harmful substances in packaging.
- *Article 3(3)*: concerns the determination of technical specifications based on which packaging will automatically meet the essential requirements from the Packaging Directive. For some product-packaging combinations, (detailed) specifications may be determined. Depending on the available technology, specifications may be added. Article 3(4) of the Decree 2014 lists the principles on which the determination of these technical specifications will be based.
- *Article 3(5)*: a ministerial regulation lays down the national standards using which a certain essential requirement included in Annex II to the Packaging Directive will automatically be fulfilled.
- *Article 3(6)*: That paragraph prohibits the provision of free unfilled packaging. A ministerial regulation will specify the packaging to which this prohibition applies, and the circumstances in which it applies.
- *Article 6(4)*: a regulation will lay down the minimum quantity by weight of plastic packaging waste that must be recycled. This concerns plastic packaging waste produced by households. The determination of the quantity by weight in a regulation aims at ensuring that a sufficient volume of recycled plastic waste remains in circulation, and that such volume is realistic in comparison to the quantity of plastic packaging placed on the market.

### **4.3. Relation of reporting obligation to Reporting Decree**

The explanatory memorandum to the Reporting Decree<sup>22</sup> states that the detailed elaboration of the waste reporting system depends substantially on the objectives of the reporting system in the context of waste policy. The reporting system primarily intends to generate information for purposes of enforcement of waste legislation. However, the reporting system is

also important for monitoring waste policy. The explanatory memorandum to the Reporting Decree as cited above pointed to the reporting obligation arising from the Waste Framework Directive and the various product-related Directives (batteries, electrical equipment and packaging).

However, the Reporting Decree includes a number of exceptions to the reporting obligation, so that the information necessary to file proper, reliable reports on packaging waste fails to be made available.

Article 2(2) of the Reporting Decree includes exceptions to the reporting obligation for facilities engaging in operations such as storage, transshipment or processing with e.g. clean plastics, glass, paper and certain metals. Those material types are frequently used for packaging.

That is why the decision was made to focus the reporting obligation pursuant to Article 10.40(1) of the EMA on packaging waste by means of Article 10 of the present

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<sup>22</sup> OJ. 2004, 522.

Decree. Pursuant to Article 10 of the Decree, only the details necessary to obtain information on the collected and processed packaging waste need to be reported. Pursuant to Article 10.40 of the EMA, certain persons or legal entities to whom company waste or hazardous waste is delivered must report the following information to a designated authority:

- the date of issue;
- the name and address of the person producing the waste;
- the customary designation and quantity of the waste;
- the location where and manner in which the waste is delivered;
- the manner in which the waste is utilised or eliminated;
- in case delivery is done through another person who was instructed to transport the waste to it: the latter's name and address, and the name and address of the person on whose behalf the transport takes place.

As indicated above, reports on packaging waste exist exclusively to enable manufacturers and importers to supply reliable information about packaging waste. Accordingly, reports on packaging waste require fewer, but more specific details than those required under Article 10.40 of the EMA.

The authority to which the information on packaging must be notified is a different authority than the authority to which reports pursuant to Article 10.40 of the EMA must be submitted, the National Waste Reporting Office.

For the following reasons, it was decided that the reporting on packaging should not be done to the National Waste Reporting Office but instead directly to StAV:

- As indicated above, reporting on packaging is intended only to ensure that the report as referred to in Article 7 of the Decree is complete and reliable. Not all the information that is reported pursuant to Article 10.40 of the EMA is needed to produce a proper report on packaging.
- Since StAV, as the collective implementing agency, is responsible for the reporting pursuant to Article 7 of the Decree, it is deemed efficient that collecting and processing companies of packaging waste should report directly to StAV.
- In order to achieve this objective of reporting on packaging, it is not necessary that this Decree should follow the deadline for reports submitted to the National Waste Reporting Office under the Reporting Decree. Pursuant to Article 3(5) of the Reporting Decree, reports must be filed within four weeks from the end of the month in which the waste delivery took place. To produce a reliable, complete report on packaging, it is deemed sufficient for the time being that the report should be filed with StAV once every calendar year. Pursuant to Article 10(3) of the Decree, a ministerial regulation will define the manner in which the reporting on packaging is to be implemented. Such ministerial regulation will determine the dates by which the reporting obligation will need to be fulfilled. For the time being, the obligation will be annual.

## **5. Implementation and enforcement**

### ***5.1. Implementation***

In the Framework Agreement, the stakeholders, being the Association of Municipalities of the Netherlands, packaging businesses, and the Ministry of I and E, have made

arrangements for the implementation of the stated objectives, for sustainability improvement, collection and recycling, and reduction of the cost of plastic packaging waste.

Since this Decree is based on the manufacturer's responsibility, the relevant obligations are addressed at the manufacturer or importer. Pursuant to the EMA, municipalities are in charge of collecting waste from citizens. For that reason, the municipalities have also been involved in the arrangements. They supply a paid service to manufacturers or importers by collecting packaging waste separately from citizens or by post-separating it from residual waste, such that it has an equivalent level as packaging waste collected with source separation. Packaging businesses and municipalities will make the relevant private contractual arrangements.

The policy of the Minister of I and E aims to define objectives and frameworks within which the stakeholders will be free to pursue the objectives with such means as they consider suitable. In addition, efforts will be made over the next years to reduce the cost of collection and recycling of plastic packaging waste.

## **5.2. Enforcement**

The manner of enforcement of the Decree is the same as the 2005 Decree. The Decree is based on the EMA. That Act determines the manner of enforcement through both administrative and criminal law. Administrative enforcement may use the instruments provided by Chapter 18 of the EMA, such as administrative coercion or pecuniary penalties. Pursuant to the Economic Offences Act, violations of this Decree constitute criminal offences. Pursuant to that Act, fines may be imposed for instance, or companies may be shut down.

Supervision of compliance with this Decree as well as administrative enforcement are the responsibilities of the Minister of I and E. The implementation of these matters has been delegated to HETI. Criminal prosecution is undertaken by the Public Prosecutor's Office.

When this Decree was drafted, HETI was involved in the form of a Feasibility and Enforceability Assessment in order to examine more closely the effects that this Decree has on the supervision as undertaken by HETI.

HETI supervises compliance with the Decree based on the principle 'trust unless'. The basis for that is formed by a system of compliance and risk selection. Object inspections, records inspections, digital inspections and audits are the available instruments. In case of adequate compliance, the inspection load on the supervisory subject is reduced, and enforcement agreements may be concluded (horizontal supervision). This enables supervision to be focused as much as possible on businesses where the degree (or lack) of compliance so requires.

The following parts of the Decree need further explanation with regard to enforcement:

- The obligation to demonstrate that packaging fulfils the essential requirements (Article 4);
- Collective implementation (art. .

### **5.2.1. The obligation to demonstrate that packaging fulfils essential requirements**

Pursuant to Articles 2 and 3, packaging must meet the requirements of the Packaging Directive, including those with respect to the use of heavy metals in packaging and the essential requirements. Article 4(1) specifically provides that a manufacturer or importer must provide all information and documentation demonstrating that the packaging meets the requirements. This requirement is a detailed implementation of Articles 5.16 (requiring information) and 5.17 (inspection of information and documents) of the General Administrative Law Act. If a packaging does not comply with the requirements from the directive, the supervisory authority may impose measures to prevent the continued placement on the market of the non-compliant packaging or to remove it from the market altogether.

### **5.2.2. Collective implementation**

In 2011, the 2005 Decree was reviewed on behalf of the Ministry of I and E. One of the conclusions of this review was that enforcement was problematic specifically for the re-use targets, since these recycling targets from the Decree can be fulfilled only collectively. The amendment to the 2005 Decree of January 2013 as cited above introduced the possibility of collective implementation of certain obligations. This has brought the 2005 Decree into line with the practice of collective implementation. This has given HETI the ability to hold the collective implementing agency accountable for the implementation of some obligations from the Decree. Paragraph 2.2 addresses the manner in which the Decree will be implemented collectively by StAV. The option of collective implementation of certain obligations has been included in the Decree. Accordingly, HETI may hold StAV accountable for the adequate implementation of certain obligations.

## **6. Effects**

### **6.1. Effects on businesses and administrative costs**

#### **6.1.1. Improvements in sustainability of packaging**

The improvement of the sustainability of packaging, for which arrangements have been made in the Framework Agreement, coincides with the objective of concretising the essential requirements as included in Annex II of the Packaging Directive. This concretisation will be achieved by laying down specifications for each type of packaging or product-packaging combination with which the essential requirements will automatically be fulfilled. This concretisation improves clarity for packaging businesses as to how they can in any case fulfil the essential requirements in a sustainable manner. Under the 2005 Decree as well, there was an obligation to fulfil the essential requirements.

#### **6.1.2. Reporting**

Article 8 of the Decree requires manufacturers and importers to report on the manner in which they implement certain obligations. To that end, they must provide information every calendar year about the quantity of packaging placed on the market during the previous calendar, the amount of collected and recycled packaging waste, and any preventive measures taken.

In recent years there has been much debate about the reported data; for this reason, the three parties to the 2013-2022 Packaging Framework Agreement have made

agreements on how to improve the reliability of these data. These agreements aim at ensuring the transparency, verifiability, reliability and independence of reporting. To that end, a reporting system has been defined in the Basic Document.

A ministerial regulation pursuant to Article 9.5.2(7) of the EMA define requirements which the reporting must fulfil, including the use of a mandatory reporting form. In elaborating these requirements and defining the form, the system as laid down in the Basic Document has been followed where possible. This has resulted in a heavier burden on packaging businesses in comparison to the burden for implementing the reporting obligation pursuant to the 2005 Decree and the Packaging Forms Regulation. However, without this heavier burden it would not be possible to achieve the desired outcomes in terms of improvements in reporting. Reliable figures on recycling are also necessary to be able to meet the requirement from the Packaging Directive for Member States inform the European Commission of their implementation of the objectives of the Packaging Directive.

The Basic Document includes descriptions of the principles and constraints based on which the data are to be collected and reported. The drafting of the Basic Document was based on the 2005 Decree as prevailing at the time. The Basic Document serves as an input to the ministerial regulation with respect to reporting. That ministerial regulation will define in more detail the reporting party, scope of the data, and the time and manner of submission.

The drafting of the Basic Document was based on principles all of which relate to an unambiguous definition of the frameworks within which the information should be recorded, and to reduction of the burden on the parties involved to the lowest possible level. For instance, it has been agreed in the Basic Document that only the necessary information will be required, and the reporting on packaging and packaging waste should be based where possible on existing operational processes.

Since a collective has now been designated, and the regulation describes exactly how the reporting is to be done, the enforceability of the Decree has also improved, which was in fact one of the objectives in making the arrangements laid down in the Framework Agreement. In recent years, HETI has indicated that the enforceability of the Decree 2005 was problematic.

The reporting obligation addresses the manufacturer or importer. Pursuant to Article 9, reporting can also be done by the collective.

The obligations arising from this Decree with regard to reporting for the various target groups are as follows:

A manufacturer or importer who places on the market or imports more than 50 000 kg per year in packaging, of which imported packaging it disposes, shall be required to file annual reports of the quantity of packaging placed on the market, the quantity of collected and recycled packaging waste, and the implementation of its obligations of prevention.

As described in paragraph 2.2, StAV has pursuant to the WMFPA assumed the responsibility of fulfilling the obligations of collection, recycling and reporting under the

Decree on behalf of all manufacturers or importers who place packaging on the market. In return, manufacturers and importers pay a waste management fee.

Manufacturers and importers are then required to file a one-time declaration of the estimated quantity of packaging that they expect to place on the market in any given year. This declaration will determine the amount of the provisional waste management fee to be paid to StAV for that year.

The ministerial regulation enacted pursuant to Article 10(3) determines that manufacturers and importers must file a declaration to StAV once yearly (before 1 April) of the actual number of kilograms of packaging that they have placed on the market, or imported and then disposed of, in the preceding year.

This declaration is then used to determine the amount of the waste management fee for the following year.

This information is used by StAV to determine whether the recycling targets have been achieved, and for reporting purposes.

The manufacturer or importer is required under the WMFPA to keep records of packaging. The packaging records constitute the basis of the information in the declaration. Manufacturers and importers shall be free to decide how they implement this obligation. A manufacturer or importer may choose to maintain relatively detailed packaging records or, where possible, a simpler connection to their existing records. Since collective implementation of the obligations of this Decree is possible at least until 2017 based on the directly binding status of the WMFPA, the administrative costs associated with reporting are considerably less than they would be if all manufacturers and importers had to prepare and submit independent reports. Provided that the information about packaging placed on the market can be derived from existing records, the associated burden will also be limited.

In addition, Article 10 includes an obligation for collecting and processing companies to report to StAV the proportion of packaging in their collected and processed packaging materials. The StAV shall be responsible for fulfilling the obligations laid down in the Decree. One of the obligations concerns reporting the quantities of collected and recycled packaging waste. For this information, the collective relies on the cooperation of collecting and processing companies. In order to enable the collective to file appropriate reports, it has been decided that an obligation for this target group should be included in the Decree as well.

From the manufacturers and importers, the collective receives details of the quantities of packaging placed on the market, and of the manner in which they have fulfilled their obligations of prevention. From the waste collecting and processing companies, StAV receives information about the quantities of packaging waste that they have collected and processed. From the municipalities, StAV receives declarations of the quantities of packaging waste collected. The municipalities and the collecting and processing companies file their declarations using an existing system by the name of Waste Tool. That system has been designed in such a manner that the required information can be reported in the simplest possible manner. This system was created under the previous Framework Agreement. In contrast to the system of the Reporting Decree, this system is specifically aimed at packaging, and keeps as close as possible to the operational processes of the parties using the system.

The collecting and processing companies who have the obligation to report the proportions of collected and recycled packaging waste shall report once every year how much packaging waste they have collected and processed. In return, they will receive

compensation from StAV of the costs incurred for maintaining and submitting the relevant information. Private arrangements have been made for this between StAV and the stakeholders. The fees are estimated by StAV to be EUR 1 000 000.- annually. Packaging waste collecting and processing companies can also more frequent reports than once per year. In that case they will receive additional compensation.

The financial cost of implementation to the manufacturer or importer is limited to payment of a waste management fee. This fee is less than the Packaging Tax that was charged until 1 January 2013, and is limited to costs associated with the reporting of information (for companies that place more than 50 000 kg in packaging on the market). Where the required information about the quantities of packaging placed on the market cannot be derived from the existing records, a manufacturer or importer is expected to also incur costs to maintain the relevant records.

StAV, being the responsible party for reporting, will undertake a number of studies annually to determine or verify the quantities of packaging placed on the market by businesses that have placed more than 50 000 kg in packaging on the market, the quantities of packaging placed on the market by businesses that have placed no more than 50 000 kg in packaging on the market, and to check and verify the collected and processed volumes of packaging waste. The associated (administrative) costs to the collective are estimated at EUR 1 500 000.- per year.

There are no more attractive alternatives to periodic reporting from a perspective of administrative costs. Each year, it must be determined whether the targets laid down in the Decree have been achieved, so that the European Commission can also be notified of the implementation of the Packaging Directive.

### **6.1.3. Raising the recycling targets**

Raising the targets requires more efforts from the packaging businesses. These efforts are expressed mainly in the fees to be paid to municipalities for plastic recycling. If more material is recycled, and there is no maximum limit to the quantity by weight to be paid for, then an increase in quantity automatically implies a proportional increase of the fees paid. The Framework Agreement includes incentives that are expected to cause the costs per tonne of recycled plastic to steadily decrease, and the revenue from the recycled material to increase. The cost levels to packaging businesses are in line with the quantities of recycled plastic. Even if the quantity rises because of the higher target, these incentives are expected to ensure that in the long run the total level of costs will fall instead of rise. Decreases and increases in costs may be passed on in the waste management fee. The costs to packaging businesses are expressed in the waste management fee paid by businesses. The Packaging Tax has been abolished from the entry into force of the WMFPA. For all businesses, the waste management fee is lower than the amount that they paid in packaging tax before that.

### **6.1.4. Articles about deposits**

The present Decree includes Articles to make charging deposits for beverage packaging obligatory. Those Articles have been included in light of a parliamentary motion adopted by Parliament (see Paragraph 2.3.3 of this explanatory memorandum). These Articles are nearly the same as the articles on deposits in the 2005 Decree. For a description of the effects of those articles on deposits, please see the explanatory memorandum to the 2005 Decree.

## **6.2. Environmental impact**

The agreements contribute to a reduction in the environmental burden of packaging. The agreements with respect to sustainability improvements will prevent waste of raw materials, ensure that packaging is designed such that it can be recycled to a greater extent and better than in the past, and that it contains higher proportions of recycled material. The agreements for the recycling targets for plastic and wood have been raised so that more material will be recycled and kept within the chain instead being otherwise utilised. The deletion of the deposit provisions does not impact the environment since these provisions have never taken effect.

The decision that the Decree no longer relates to paper and cardboard does not have any adverse environmental impact. This is because paper is a material stream that produces revenue. There is accordingly an economic incentive to collect and recycle this stream.

## **7. Public-inquiry responses**

In implementation of Article 21.6(4) of the EMA, the draft Decree was submitted to both Houses of Parliament on 13 May 2014<sup>23</sup>. Further to this, the Lower House of Parliament presented written questions on 28 May 2014<sup>24</sup>. On 16 June 2014 those questions were answered by the Secretary of State for I and E<sup>25</sup>. The draft decree was also discussed on 18 June in the Meeting of the Parliamentary Committee on Resources and Waste<sup>26</sup>. The State Secretary has answered the remaining questions raised during the committee meeting in a subsequent letter<sup>27</sup>.

In addition, the draft Decree was published in the Official Gazette of 15 May 2014<sup>28</sup> so that every person has been able to express its views on it.

Public-inquiry responses have been received from:

- A joint response from VMK, PRN, SKB, SDV and SKH (below: the materials organisations (MO));
- Association of the Dutch Chemical Industry (below: VNCI);
- NRK Daklicht;
- Royal KVGGO;
- NVRD.

The responses will be discussed individually below.

The material organisations (below: MO) complain of the lack, in the explanatory memorandum to the draft Decree, of the relation to European legislation on free movement of goods, the Packaging Directive and the Waste Framework Directive. The MO claim that the Dutch legislation is more stringent than the European legislation. This would burden businesses with higher costs than their European competitors. These

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<sup>23</sup> Parliamentary Proceedings II 2013/14, 28 694, No 115.

<sup>24</sup> Parliamentary Proceedings II 2013/14, 2014D19688.

<sup>25</sup> Parliamentary Proceedings II 2013/14, 28 694, No 116.

<sup>26</sup> Parliamentary Proceedings II 2013/14, 2014D23722.

<sup>27</sup> Parliamentary Proceedings II 2013/14, 28 694, No 116.

<sup>28</sup> Official Journal 2014, 11354.



additional costs are not mentioned, and their effects are not explained. The MO indicate that they are of the opinion that Articles 2 and 3 seem to conflict with the requirements of the single EU market.

In fact, except for the recycling targets, it is not true that the draft Decree is more stringent than the Packaging Directive. Article 2(1)(b) of the draft Decree includes the option to require by ministerial regulation that a packaging must not contain a particular substance or a specific quantity thereof, if the processing of packaging with such substance or such quantity thereof can have harmful effects on the environment. This option implements certain essential requirements from the Packaging Directive. The per-article section of the explanatory memorandum for Article 2 describes those requirements. Pursuant to Article 9 of the Packaging Directive Member States are required to take measures to ensure that packaging meets these essential requirements. For the implementation of the essential requirement on the use of certain dangerous substances (in certain quantities) it is logical to expressly prohibit the use of those substances (or the use in certain quantities) since the intended purpose, i.e. percentage or reducing the use of those substances in packaging, cannot be effectively achieved otherwise. The per-article section of the explanatory memorandum as cited above also explains that a regulation about this aspect will be subject to technical notification to the European Commission.

The possible definition of technical specifications pursuant to Article 3(3) of the draft Decree to elaborate the essential requirements does not go beyond European legislation. Paragraph 8 of the general part of the explanatory memorandum addresses the relation between the option to define technical specifications and the Packaging Directive. It is also explained why this option does not prejudice the single EU market. The relation with the Waste Framework Directive is not specifically discussed since the Packaging Directive a more specific directive with respect to waste is than the more general Waste Framework Directive<sup>29</sup>.

The MO point to the large scope in the draft Decree to elaborate matters in ministerial regulations. They are of the opinion that this leads to 'governing by decree' and legal uncertainty.

Paragraph 4.2 of the explanatory memorandum addressed at length the possibilities for laying down detailed regulations. Article 9.5.2(7) of the EMA already creates the competence to lay down detailed rules for matters addressed by a ministerial regulation pursuant to Paragraph 1 of Article 9.5.2(1) of the EMA. The draft Decree is based on Article 9.5.2(1). Accordingly, the competence to lay down detailed rules for the matters addressed by the Decree is already in place. In the draft Decree it has been decided that for some matters the competence to lay down the relevant detailed rules should be defined in the Decree itself. This was done precisely to improve legal certainty. The rules that may be enacted to elaborate certain matters from the draft Decree are so detailed in nature (such as the technical specifications defined pursuant to Article 3(3) of the draft Decree, or the circumstances in which the prohibition to provide free packaging will apply, Article 3(6)). Or the detailed rules relate to matters that will need to be rapidly changed or elaborated (for instance the minimum quantity by weight of plastic packaging waste that should be recycled, Article 6(4)).

In addition to the aforementioned more general comments, the MO have also made some comments about the Articles of the draft Decree.

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<sup>29</sup> Article 2(4) of the Waste Framework Directive.

*Article 1(1)(i)* - The MO propose that the definition of 'recycling' from the Waste Framework Directive should be used in Article 1.1(1)(i) of the draft Decree, instead of the definition from the Packaging Directive.

In June 2012, the European Commission<sup>30</sup> published the 'Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste'. It expressly provides with respect to the applicable definition of 'recycling' that this should be as given in the Packaging Directive, not the Waste Framework Directive.

*Article 2(1)(b)* -The possibility of conflict of this paragraph (about the prohibition to use certain substances) with the single market has been addressed above in this section.

*Article 3(2)* - This paragraph requires a manufacturer or importer of a packaging to prevent the production of scattered waste as far as possible in the design and manufacture of packaging. According to the MO, this is an expansion of scope with respect to the essential requirements from the Packaging Directive. A similar provision was already present in the 2005 Decree, and was considered at the time, in light of the translation table, to be an implementation of Article 4(1) of the Packaging Directive. Pursuant to the aforementioned paragraph of the Directive, Member States are required to take preventive action to prevent waste. This is reiterated in the translation table to the draft Decree. This provision on the prevention of scattered waste is therefore not considered to be an expansion of scope with respect to the essential requirements, but an implementation of the Directive.

*Article 3(3)* - This paragraph states that packaging shall automatically be deemed to fulfil one or several requirements of Annex II of the Packaging Directive if they fulfil the specifications laid down by ministerial regulation for each packaging type or combination of packaging with a specific product. The MO insist that the exact wording of the Packaging Directive should be followed here instead of introducing specific national standards.

The draft Decree does not introduce any specific national standards but in fact proposes to improve clarity by defining specifications that will automatically lead to fulfilment of the essential requirements. Packaging businesses, as parties to the Framework Agreement, in fact consider this improved clarity to be important. In this context it should also be noted that the essential requirements can always be met through other means than by following the technical specifications.

*Article 3(6)*- This paragraph creates the possibility to prohibit the provision of free unfilled packaging. The MO note that the determination of the relevant charge and its implementation could lead to an unacceptably high administrative burden.

This paragraph does not introduce a charge on hitherto free packaging. Therefore, there is no high administrative burden involved.

*Article 6* - The relevant principles for improvements in packaging sustainability are the 4 Rs: Reduce, Re-use, Recycle and Renew. However, the ministerial regulation places no value at all on the fact that various packaging types become more lightweight. Reduce (less material) is the highest purpose. However, the fact that less material is placed on the market is not taken into account in any of the figures.

The same applies to re-use. Re-use plays a prominent part, with a positive effect on prevention. The Decree however does not derive any value from it. Product and material

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<sup>30</sup> [http://ec.europa.eu/environment/waste/framework/pdf/guidance\\_doc.pdf](http://ec.europa.eu/environment/waste/framework/pdf/guidance_doc.pdf), see page 40.

re-use<sup>31</sup> are mutually reinforcing. Both reduce and re-use are placed higher in the waste hierarchy than recycling, and this must be rewarded. For each material, the possibilities of the 4 Rs should be rewarded in terms of attainment of the targets.

The Packaging Directive and the Framework Agreement do not include any qualitative targets for prevention or re-use. Such targets have therefore also not been incorporated in the draft Decree. Prevention in terms of less material use will of course also contribute to achieving the recycling targets, since this target is a percentage of the overall packaging quantity placed on the market.

*Article 6(2)(c)*- Pursuant to this Article, the minimum percentage of material re-use for glass packaging should be 90 %. It is noted that this target in fact dates from the Packaging Agreement I. Despite great efforts by all stakeholders, including municipalities, this percentage was never achieved.

Pursuing the highest attainable targets is fully endorsed by the sector. However, the current target for glass packaging no longer seems realistic, and a review of this target is requested.

The Framework Agreement between the packaging businesses, the Municipalities Association and the National Government, also contains agreements about the recycling targets for a number of materials. With respect to the glass stream no new agreements have been made, so that the recycling target is the same as in previous years. In 2017 a review of the Framework Agreement will be undertaken. This will show whether an adjustment to the target for glass is necessary and desired.

*Article 9* - This article provides that manufacturers and importers may implement collectively the obligations as referred to in Articles 5, 6(2) and (4), 7 and 8(1). It can be deduced from the context that the obligation to fulfil the essential requirements can also be implemented collectively. According to the explanatory memorandum, this obligation should be borne by individual businesses.

It is not appropriate that the essential requirements should be implemented collectively. The fact that reporting the implementation of the Decree can be done collectively does not imply that the implementation of the essential requirements can also be done collectively. Fulfilment of the essential requirements will take place at the time of design and manufacture of packaging. Collective implementation is therefore not possible.

*Article 9(2)(a)*- The MO would like to see it mentioned additionally that, based on the directly applicable agreement, a number of special arrangements have been made with sectors with respect to the payment obligation. An example would be the Commercial Packaging Companies Regulation.

The regulations cited by the MO have not been given direct application pursuant to Article 15.36 of the Environmental Management Act, so that they cannot be added to Article 9 of the draft Decree.

*Article 10*- Pursuant to this Article, collecting companies must provide information among others about the manner in which packaging is being utilised or eliminated. According to the MO this will create substantial problems for collecting companies.

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<sup>31</sup> The decree does not use the terms “product and material reuse”,

The relevant wording is based on Article 10.40(1)(e) of the EMA. Pursuant to the same paragraph, collecting companies of company waste must report information about the manner in which waste is being utilised or eliminated.

The assumption is that the material (which must be paid for) is actually reused. However, there can be no absolute certainty about this. According to the MO, this requirement also repeats the same requirements as contained in the WSR, leading to unwanted duplication of legislation.

The information about packaging is necessary to have adequate reporting on the implementation of the Decree. The cited WSR rules serve a different purpose and cannot be directly applied for adequate reporting. The WSR contains a variety of procedures, such as a prohibition, permit or accompanying document. The procedure to be followed depends on the method of processing after transport, the type of waste, and the destination country.

The VNCI considers that a ministerial regulation that would prohibit the use of certain substances in certain volumes (Article 2(1)(b)) should be subject to public consultation. For the implementation of this regulation, the highest attainable targets as defined by KiDV will be taken into account. These targets are defined in consultation with the stakeholders. Therefore, these targets are not imposed unilaterally. The businesses concerned can make active contributions and provide relevant inputs. The VNCI makes the same remark about the ministerial regulation pursuant to Article 3(3) to lay down more detailed specifications. The same response can be given here with respect to the consultation options.

The VNCI wonders why the information obtained pursuant to the EMA and the living environment permit, if any, cannot be used for monitoring policy compliance, but instead the chemical industry is burdened with additional administrative obligations.

First of all it must be emphasised that the reporting obligation for manufacturers and importers of packaging applies already since the entry into force of the 2005 Decree. It is therefore incorrect that the draft Decree should introduce a completely new administrative obligation. In addition, paragraph 6.1.2 of this explanatory memorandum describes that StAV, as the collective implementing agency, is responsible for the annual reporting. Individual businesses are only required to submit reports, or provide information to be used by StAV to prepare the collective report, with respect to the preventive requirements from the Decree. An additional aspect is that reporting on the implementation of the Decree requires specific information, such as information about the quantities of packaging placed on the market or about the manner in which the packaging waste is or has been recycled.

NRK daklicht is puzzled by the fact that a private-law body such as KiDV, which hardly represents all the relevant organisations and interests, should be given this role in defining the highest attainable targets. The elaboration of the essential requirements should be done based on Dutch or European standards. Businesses are closely involved in defining these standards and all parties are given the opportunity to participate in the standards committee and provide their input. There is no such opportunity when standards are defined by the KiDV. There is no appropriate formal structure nor open participation or voting rights.

The Packaging Directive provides that a packaging meets the essential requirements if it has been designed and manufactured in accordance with European harmonised

standards or national standards. A ministerial regulation will define the relevant national standards. Packaging that have been designed and manufactured in accordance with that standard will be deemed to comply with the essential requirements to which the standard relates. Then, a manufacturer or importer will only need to show that the product was developed in accordance with the standard in order to demonstrate compliance with the requirement to which the standard relates.

However, it has been found in recent years that the essential requirements are couched in quite general terms. That makes it difficult for packaging businesses to pursue sustainability improvements based on these requirements. Enforcement agencies as well face difficulties in determining whether the essential requirements have been met.

The aim of this part of the draft Decree is to ensure a better, more permanent implementation of the essential requirements. To achieve this, the parties to the Framework Agreement have agreed that the specific implementation of the essential requirements should consist in determining the highest attainable targets for product-packaging combinations. The technical specifications are another way of meeting the essential requirements.

For each sector as defined by the Sustainable Packaging Knowledge Institution, consisting of a group of manufacturers and importers, plans for sustainability improvements are prepared by the sector itself. The Knowledge Institution has developed a method for defining the highest attainable targets within each sector. Using this method and the associated tools, these sectors can then conduct a 0- measurement and draft their sector plans.

The KiDV will assess, with input from the scientific community and other knowledge institutions, the highest attainable targets so defined for packaging combinations, and decide on the basis of research whether these are truly the highest attainable targets. If they are not, then a different highest attainable target will be defined by the Knowledge Institution. This target will first be presented to the relevant businesses for comments. These requirements can then be used as inputs for the technical specification in the ministerial regulation.

NRK Daklicht notes that Articles 2 and 3 of the draft Decree are more stringent than permitted under European legislation, specifically Article 18 of the Packaging Directive.

Nearly the same remark made by the MO was discussed earlier in this section.

NRK Daklicht therefore advocates that the elaboration of the essential requirements for the Netherlands (if permitted under European rules) should be achieved through the national standards institute, NEN.

The Packaging Directive provides that a packaging meets the essential requirements if it has been designed and manufactured in accordance with European harmonised standards or national standards. A ministerial regulation will define the relevant national standards. Packaging that have been designed and manufactured in accordance with that standard will be deemed to comply with the essential requirements to which the standard relates. Then, a manufacturer or importer will only need to show that the product was developed in accordance with the standard in order to demonstrate compliance with the requirement to which the standard relates.

Royal KVGO makes a comment about the definition of the concept of "packaging" in the implementation of the directly applicable waste management fee agreement. KVGO is puzzled by the fact that the definition of what constitutes packaging under the Decree is left for StAV to decide in the context of charging a waste management fee. KVGO considers that this competence to define whether or not something constitutes

packaging should be exercised by the Ministry of I and E, so that the relevant decision of the Ministry could be subject to administrative-law procedures, or alternatively that a decision by the StAV of whether something is to be considered packaging should be deemed to be an administrative-law decision.

In the announcement of the directly binding status of the waste management fee agreement (abbreviated above as: WMFPA)<sup>32</sup> it is noted that the waste management fee relates to all packaging materials distinguished in the Decree, regardless of whether they are produced in household waste or in commercial waste streams: glass, wood, paper and cardboard, metal, plastics and other materials. Packaging waste is packaging as defined in Article 1(a) of the Decree which a manufacturer or importer has placed at the disposal of another person in the Netherlands, or which a manufacturer or importer has imported and then disposed of. Packaging comprises consumer packaging as well as commercial packaging. For the implementation of the WMFPA therefore, the definition of "packaging" as contained in the Decree is leading. The implementation of the WMFPA is governed by private law. Any disputes that might arise between StAV and businesses charged for waste management fees should be decided using civil means. The Ministry of I and E, or HETI, will assess whether or not a given material constitutes packaging under the Decree in the context of supervision of compliance with the Decree. In light of Article 9 of the draft Decree, payments of waste management fees by businesses are relevant for the supervision by HETI of compliance with the Decree. Due to the payment of those fees, certain obligations from the Decree (pursuant to Article 9(2) of the Decree) are no longer applicable to individual manufacturers or importers, but instead are borne by the collective implementing agency StAV. The same applies to a manufacturer or importer who places on the market or imports 50 000 kg of packaging or less. This is because it is not required to pay any fee pursuant to the WMFPA. In the context of supervision of compliance, HETI will assess whether a business is required to fulfil the relevant obligations arising from the Decree. That will only be the case if the business places packaging on the market or imports it and then disposes of it, as defined in the Decree.

The NVRD considers that Article 10 of the draft Decree, providing for a reporting obligation for collecting and processing companies, does not interface well with the EMA. Article 10.36 of the EMA equates collected or delivered household waste to commercial waste for purposes of the application of the provisions on commercial waste management. However, the draft Decree only refers to 'packaging released as commercial waste in the Netherlands'.

To avoid any confusion, Article 10(1) has been adjusted compared to the Article 10 as included in the pre-published draft Decree. Article 10 of the present Decree does not refer to packaging released as commercial waste, but instead to "delivered company waste, to the extent that it constitutes packaging". This aims at removing any confusion about the manner in which packaging waste would have to have been produced. The cited equation of collected and issued domestic waste being packaging is not affected.

The NVRD considers that the position of municipalities is inadequately defined in the draft Decree.

According to the NVRD, the draft Decree should facilitate consultations between municipalities and packaging businesses. Since municipalities have no defined position in the draft Decree, the NVRD finds that the process of consultation and negotiation always

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<sup>32</sup> Official Journal 2012, 20994.

proves to be difficult in practice. Negotiating rounds about fees and collection methods spanning several years are no exceptions. The NRVD considers that provisions could be included in the draft Decree which clarify the position of municipalities and simplify their negotiations with manufacturers.

The responsibilities of municipalities with respect to matters including household waste are regulated in Article 10.4 of the EMA. The draft Packaging Management Decree as well as the present Decree are based on the manufacturer's responsibility. For that reason, the municipalities cannot be given a defined role in the draft Decree. In addition, there are currently no grounds to accord a defined role to municipalities in the draft Decree over and above their responsibilities pursuant to the EMA. I will of course closely monitor the implementation of the arrangements about packaging waste management by municipalities and packaging businesses, and take action where required.

## 8. Packaging Directive

The Decree, as does the 2005 Decree, serves to implement the Packaging Directive. The translation table below indicates for each article of the Directive how it has been implemented in the 2005 Decree as well as in the present Decree.

**Translation table**

<b>Article of Packaging Directive<sup>33</sup></b>	<b>Article of 2005 Decree</b>	<b>Article of present Decree</b>	<b>Comments</b>
Article 1- Objectives	Needs no implementation	Needs no implementation	
Article 2- Scope of application			
<i>Paragraph 1</i>	Article 2(1)	Article 5(1)	
<i>Paragraph 2</i>	Needs no implementation	Needs no implementation	
Article 3- Definitions			
<i>Under 1- Packaging</i>	Article 1(1), (a) to (d)	Article 1(1), (a) to (d)	
<i>Under 2- Packaging waste</i>	Via Article 1.1 EMA	Via Article 1.1 EMA	
<i>Under 3- Packaging waste management</i>	Via Article 1.1 EMA	Via Article 1.1 EMA	
<i>Under 4- Prevention</i>	Article 3	Via Article 3(1)	The 2014 Decree requires operating in accordance with the Annex
<i>Under 5- Re-use</i>	Implementation of this definition is not necessary, see Article 8	Implementation of this definition is not necessary	Re-use as a product is not mandatory in the Decree
<i>Under 6- Recovery</i>	Via Article 1.1 EMA	Via Article 1.1 EMA	
<i>Under 7- Recycling</i>	Article 1(d) (in case of re-use as material)	Article 1(1)(j)	
<i>Under 8- Energy recovery</i>	Needs no implementation	Needs no implementation	
<i>Under 9- Organic recycling</i>	Needs no implementation	Needs no implementation	
<i>Under 10- Elimination</i>	Via Article 1.1 EMA	Via Article 1.1 EMA	

<sup>33</sup> Based on the version of the Packaging Directive including Commission Directive 2013/2/EU of 7 February 2013 (OJ (EU) 2013, L 37).

<i>Under 11- Undertakings</i>	Needs no implementation	Needs no implementation	
<i>Under 12- Voluntary agreement</i>	Needs no implementation	Needs no implementation	
Article 4 - prevention			
<i>Paragraph 1</i>	Article 3	Article 3	
<i>Paragraph 2</i>	Needs no implementation	Needs no implementation	
<i>Paragraph 3</i>	Needs no implementation	Needs no implementation	
Article 5 - Re-use	Article 8	No longer implemented	Is optional (promoting re-use systems such as deposits)
Article 6 - Recovery and recycling			
<i>Paragraph 1</i>	Articles 4 and 18		
<i>Paragraph 2</i>	Article 3(1)(b) and (c)	Via Article 6(5)	(quality) requirements for recycling will be included in a regulation
<i>Paragraphs 3 to 11</i>	Needs no implementation	Needs no implementation	
Article 7- Return, collection and recovery systems			
<i>Paragraph 1</i>	Articles 2 and 8	Articles 5 and 9(4)	Article 9(4) prohibits trade barriers in case of collective implementation
<i>Paragraph 2</i>	Needs no implementation	Needs no implementation	
Article 8- System of certificates and identification			
<i>Paragraph 1</i>	Needs no implementation	Needs no implementation	
<i>Paragraph 2</i>	Article 12(1)	Article 2(3)	
<i>Paragraph 3</i>	Article 12(2)	Article 2(4)	
Article 9- Essential requirements			
<i>Paragraph 1</i>	Article 13	Article 3(1)	
<i>Paragraph 2</i>	Needs no implementation	In the regulation pursuant to Article 3(5)	The regulation lists the standards and indicates the requirement to which the standard applies
<i>Paragraph 3</i>	Needs no implementation	Needs no implementation	
<i>Paragraph 4</i>	Needs no implementation	Needs no implementation	
Article 10- Standardisation	Needs no implementation	Needs no implementation	
Article 11- Concentrations of heavy metals in packaging			
<i>Paragraph 1</i>	Article 14(1)	Article 2(1)(a)	
<i>Paragraph 2</i>	Article 14(2)	Article 2(2)	
<i>Paragraph 3</i>	Needs no implementation	Needs no implementation	
Article 12- IT systems			
<i>Paragraphs 1 and 2</i>	Articles 6 and 7	Article 8	
<i>Paragraphs 3 to 7</i>	Needs no implementation	Needs no implementation	



Article 13 - Information to packaging users	Needs no implementation	Needs no implementation	
Article 14- Waste management plans	Has been implemented pursuant to the waste control plan as referred to in Article 10.3 EMA	Has been implemented pursuant to the waste control plan (LAP) as referred to in Article 10.3 EMA	
Articles 15–25	Need no implementation	Need no implementation	

Article 16 of the Packaging Directive requires Member States to inform the European Commission of all draft measures which they propose to take in the context of that Directive. In light of that requirement, the present Decree has been submitted to the European Commission. This notification of draft measures may coincide with the notification pursuant to the Directive on technical notifications<sup>34</sup>. The Decree contains no new technical requirements as defined in the Directive on technical notification.

The implementation rules pursuant to the Decree may contain technical regulations. These may be the rules implementing Article 2(1)(b) and Article 3(3). These implementation rules, or later changes therein, have been or will be notified to the European Commission during the drafting stage, pursuant to the technical Notification Directive.

The manner in which the Decree implements the requirements for prevention does differ from the 2005 Decree. The Decree includes an obligation for all packaging placed on the market to meet the essential requirements as contained in Annex II of the Directive. The Decree merely includes a reference to the relevant Annex to the Packaging Directive, and does not elaborate the requirements (even partly) as was done earlier in Article 3 of the 2005 Decree.

As indicated above in this explanatory memorandum, those essential requirements have been defined in the form of target-related provisions. In order to make these rules more concrete, a ministerial regulation will define technical specifications for each type of packaging or product-packaging combination. These specifications will provide businesses with the necessary clarity as to how they can fulfil the technical requirements; the specifications so defined can be optimised for maximum sustainability improvements. This definition of technical specifications does not run counter to the protection of the single EU market. This is because Article 3(3) of the Decree expressly provides that compliance with the technical specifications will automatically lead to compliance with the relevant essential requirements from the Directive. It remains possible to comply with the essential requirements under the Packaging Directive other than by following the technical specifications.

The new targets for recycling of the material types plastic and wood are higher than those of the Packaging Directive. However, this was already the case in the 2005 Decree, which contained stricter recycling targets than required by the Directive. Under the Packaging Directive, stricter targets are permitted if they do not interfere with the

<sup>34</sup> Directive No 98/34/EC of the European Parliament and of the Council of the European Union of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services (OJ (EC) L 204), as amended pursuant to Directive No 98/48/EC of 20 July 1998 (OJ (EC) L 217).

single market or with the compliance of other Member States with the Packaging Directive.

## **9. Review**

The Framework Agreement provides that the Framework Agreement will be reviewed in 2017. That opportunity will also be used to assess the effectiveness of the Decree by 2018 and decide whether any adjustments are needed and whether the defined targets have been achieved. The outcomes of the review of the Framework Agreement will be used for that purpose.

## **10. Entry into force**

The Decree will take effect on a date as determined by Royal Decree. The date of entry into force may be different for the various Articles or parts of the Decree. These dates will be determined taking account of the policy of common commencement dates. The obligations with respect to recycling targets apply to distinct calendar years. These obligations will therefore take effect at the beginning of each calendar year. The same applies to the obligation to file a report.

Whether and when Article 7 on beverage cartons recycling will take effect, will be decided by the outcomes of the pilot with beverage cartons as agreed in the Framework Agreement.

The explanatory memorandum to the 2005 Decree defined the circumstances in which the articles on deposits in that Decree would take effect. Those circumstances will also determine the entry into force of the relevant provisions (Articles 11 to 15) of the present Decree. If those circumstances should arise, then the provisions on deposits will not take effect until at least one year after the announcement of the entry into force in the Official Journal (see Article 20). This serves to allow businesses the opportunity to prepare for the introduction of the deposits. The provisions in the Decree about deposits require businesses to charge deposits for more types of beverage packaging than the types of beverage packaging on which deposits were or are being charged based on commodity board regulations or private agreements.

Without prejudice to the aforementioned provisions of the Decree on deposits for beverage packaging, I will prepare an amendment to the Decree which will delete the articles on deposits. I will do so simultaneously with the decision to clear the deposit system.

## II. Per-article section of the explanatory memorandum

### Article 1

This Article contains the relevant terms for the 2014 Decree and their associated definitions. The terms of 'packaging' (Subparagraph a), 'sale or primary packaging' (Subparagraph b), 'combined or secondary packaging (Subparagraph c)', 'dispatch or tertiary packaging' (Subparagraph d) and 'Packaging Directive' (Subparagraph h) have not been changed with respect to the 2005 Decree. The term 'packaging' has been radically changed in 2010, and the terms for the various types of packaging (Subparagraphs b to d) have been added. For an explanation of these terms, reference is therefore made to the explanatory memorandum to the 2010 Decree<sup>35</sup>.

The term 'Packaging Directive' (Subparagraph h) constitutes a dynamic reference as referred to in Guideline 336 of the Legislative Guidelines: all references in the Decree to the Directive will be deemed to include any and all amendments to this Directive.

Some terms from the 2005 Decree relating to its provisions on deposits for beverage packaging are no longer applicable since the relevant provisions have been deleted. The following terms and associated definitions are new or changed with respect to the 2005 Decree.

#### *Subparagraphs e and f*

In Article 1(e) and (f) the terms 'offering on the market' and 'placement on the market' have been included with their associated definitions. These terms are used in an EU regulation on accreditation and market surveillance relating to the marketing of products<sup>36</sup>. Among other things, this Regulation aims at harmonising European legislation on the marketing of products as far as possible across the EU. Many terms in this Regulation have therefore been included in recent European legislation on products. The Packaging Directive dates from before this Regulation.

The term 'making available on the market' is defined as any supply of a packaging for distribution, consumption or use in the course of a commercial activity, whether in return for payment or free of charge. This activity can be undertaken both by a manufacturer or importer and by a retailer or distributor.

The term 'placing on the market' is defined as the first making available of a packaging. This activity can only be undertaken by the manufacturer or importer of the packaging. These terms are relevant for different parts of the Decree: for the articles on requirements for packaging, and for the articles on receipt and recycling of packaging at the waste stage. The definition of these terms does not specify whether 'the market' refers to 'the EU market' or only 'the market in the Netherlands'. Each provision of the present Decree specifies the market to which it applies. The requirements for packaging and prevention (paragraph 2) apply to packaging that is placed on the market in the EU, i.e. it includes packaging that is produced in the Netherlands and exported directly to another EU country. That is different for the provisions on receipt and recycling (paragraph 3). Those provisions apply only to packaging that has been placed on the market in the Netherlands.

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<sup>35</sup> The definition of 'packaging' in the 2005 Decree has been radically changed by OJ. 2010, 324.

<sup>36</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ (EU) 2008, L 218).

### *Section g*

The definition of the term of 'manufacturer or importer' is largely the same as the definition of the same term in the 2005 Decree, with the terms 'making available on the market' and 'placing on the market' incorporated into the definition of 'manufacturer or importer'. The scope of the term 'manufacturer or importer' has been reduced somewhat in comparison to the 2005 Decree. A person who professionally or commercially makes available to another person for the first time paper or cardboard that is not used to manufacture packaging, is no longer considered a 'manufacturer or importer' pursuant to the 2014 Decree. This is related to the decision that the 2014 Decree will henceforth apply only to packaging, not to paper and cardboard not being packaging (see paragraph 3.1 of the general part of this explanatory memorandum).

### *Section i*

The term 'recycling' replaces the term 're-use as material'. The definition has remained the same, and is in line with the term 'recycling' from the Packaging Directive, Article 3(7).

### *Section j*

This section includes a definition of 'beverage cartons'. This definition is slightly different from the definition that was included in Article 9(b) of the 2005 Decree. In the Decree, a beverage carton is a packaging suitable for packaging liquid foodstuffs. The leading criterion for this definition is whether the contents are intended for human consumption. Accordingly, contrary to what the term suggests, these need not be limited to beverages. They could also be liquid products intended for cooking (sauces, etc.). It was decided to stay with the term 'beverage cartons' instead of using a term such as food carton. The term 'beverage carton' is commonly used in the packaging industry.

The minimum percentage of paper or cardboard (at least 70 %) in a beverage carton has been lowered with respect to the percentage in the 2005 Decree.

### *Paragraph 2*

The second paragraph aims at clarifying that packaging as referred to in Annex I to the Packaging Directive is included in, but does not exhaust the class of packaging as referred to in Paragraph 1(a) to (d) of the 2014 Decree. In this Annex to the Packaging Directive, examples are given of products covered by the general definition of 'packaging' as included in Article 3(1) of the Packaging Directive. This definition has also been incorporated into Article 1(1)(a) to (d) of the 2014 Decree.

### *Paragraph 3*

Paragraph 3 provides that the rules defined in the Decree for packaging shall apply without prejudice to the Commodities Act (Packaging and Consumer Articles) Decree and to the relevant EU legislation on materials and articles that come into contact with food. These are the following EU regulations:

- Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact

- with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ (EU) 2004, L 338);
- Commission Regulation (EC) No 282/2008 of 27 March 2008 on recycled plastic materials and articles intended to come into contact with food and amending Regulation (EC) No 2023/2006 (OJ (EU) 2008, L 86);
- Commission Regulation (EC) No 2023/2006 of 22 December 2006 on good manufacturing practice for materials and articles intended to come into contact with food (OJ (EU) 2006, L 384);
- Commission Regulation (EC) No 450/2009 of 29 May 2009 on active and intelligent materials and articles intended to come into contact with food (OJ (EU) 2009, L 135);
- Commission Regulation (EC) No 1895/2005 of 18 November 2005 on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food (OJ (EU) 2005, L 302);
- Commission Regulation (EU) No 10/2011 of 14 January 2011 on plastic materials and articles intended to come into contact with food (OJ (EU) 2011, L 12).

## **Article 2**

Article 2(1)(a) specifies the permitted concentrations in packaging of lead, cadmium, mercury, hexavalent chromium or compounds thereof. This concentration requirement was already incorporated into Article 14 of the 2005 Decree. Paragraph 2 exempts some types of packaging from the concentration requirement. These exemptions were also included in the 2005 Decree, and are taken from the Packaging Directive.

A ministerial regulation pursuant to Article 9.5.2(7) of the EMA will specify how the concentration requirement as referred to in Paragraph 1(a) is to be defined. That is necessary since confusion sometimes arises in practice as to how this concentration should be defined if the packaging consists of a number of different components.

Paragraph 1(b) provides that in addition to the concentration requirement as included in Subparagraph a, the substances, or substances in certain quantities, as determined by ministerial regulation, must not be used in packaging. These are substances in packaging that can have harmful effects on the environment when the packaging is processed as waste. For the terms 'processing' and 'environmental effects' see Article 1.1 of the EMA. The option to prohibit the use of certain substances in packaging elaborates the following essential requirements from Annex II of the Packaging Directive:

- Packaging shall be designed, produced and commercialised in such a way as to permit its re-use or recovery, including recycling, and to minimise its impact on the environment when packaging waste or residues from packaging waste management operations are eliminated.
- Packaging shall be so manufactured that the presence of noxious and other hazardous substances and materials as constituents of the packaging material or of any of the packaging components is minimised with regard to their presence in emissions, ash or leachate when packaging or residues from management operations or packaging waste are incinerated or landfilled.

The option to prohibit the use of substances will possibly be invoked with respect to PVC. PVC can reduce the recyclability of PVC-containing packaging. The Framework

Agreement also includes a commitment, as part of the efforts to improve sustainability, to reduce PVC use in packaging in the supermarket sector.

Provisions included in a ministerial regulation in implementation of Article 2(1)(b) will be notified to the European Commission during the drafting stage, pursuant to the Directive on technical notifications.

Paragraph 3 of Article 2 refers to a European Decision of 1997<sup>37</sup> which lists the numerical codes and abbreviations used to specify the various types of packaging materials. It is also specified that these codes and abbreviations may be used on a voluntary basis to refer to the type of packaging material, but that any use of abbreviations and numerical codes must be as specified in the Annexes to the Decision. This will promote the unified use of codes across the EU. This Article does not apply to the use of logos and symbols. Existing logos such as the bottle bank logo may continue to be used. Paragraph 3 of Article 2 corresponds to Article 12(1) of the 2005 Decree.

Paragraph 4 of Article 2 provides that the reference as required by Paragraph 3 should be clearly visible, legible and durably recognisable even after the packaging has been opened. This Paragraph 4 also corresponds to Article 12(2) of the 2005 Decree.

### **Article 3**

#### *Paragraph 1*

This Article provides that it shall be prohibited to make a packaging available on the market in the EU, or to have it available for that purpose, if it does not fulfil Annex II of the Packaging Directive. These requirements are referred to as the essential requirements in Article 9 of the Packaging Directive. The 2005 Decree provided, in Article 13, that packaging had to fulfil the essential requirements.

The essential requirements often take the form of target-related provisions. These essential requirements comprise, among other things, that a packaging should be limited in volume and weight, that a packaging should be designed and manufactured so as to allow its re-use and recycling, and the least possible amounts of harmful substances are used. As explained in the general part of this explanatory memorandum, the businesses community and the National Government share the desire to elaborate these essential requirements as concretely as possible so as to encourage compliance with the requirements and to improve the verifiability of those requirements. The third and fifth sections of Article 3 provide that under certain conditions, a packaging will automatically be deemed to meet one or more of these essential requirements.

#### *Paragraph 2*

Paragraph 2 of this Article provides that a packaging must be designed and manufactured so as to prevent the production of scattered waste as far as possible. This is an added requirement over and above the essential requirements from the Packaging Directive, but is in line with the prevention target of the Packaging Directive to reduce the harmfulness of packaging waste to the environment. This paragraph corresponds to

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<sup>37</sup> Decision No 97/129/EC of the Commission of the European Communities of 28 January 1997 establishing the identification system for packaging materials pursuant to Directive No 94/62/EC of the European Parliament and of the Council on packaging and packaging waste (OJ (EC) L 50).

the provision on reducing scattered waste in Article 3, preamble and Subparagraph d of the 2005 Decree. Measures to reduce the production of scattered waste include e.g. requirements for placing a (waste bin) logo on the packaging, or for designs of new packaging. The latter type of measures could also consist of eliminating certain types of packaging such as the plastic wrapping around cigarette packs. Measures to prevent scattered waste will of course be taken mainly by manufacturers and importers in the foodstuff industry.

#### *Paragraphs 3 and 4*

As referred to above, the essential requirements have the form of target-related provisions. The manner of implementation of these requirements is not prescribed by the Packaging Directive. For this reason, Paragraph 3 includes the option of specifying for individual types of packaging (e.g. bottles and cans) or product-packaging combinations (margarine tubs or milk cartons) the specifications deemed universally sufficient for compliance to one or more essential requirements. The elaboration of these technical specifications in the regulation will be based on the Sustainability Agenda. The Framework Agreement the commitment that the parties to the Agreement consider further improvements in the sustainability of packaging materials to be desirable, and that they will give it a high priority. It has therefore been laid down in the Framework Agreement that a Sustainability Agenda will be drafted in 2013 for the period until 2018, and an agenda for the period until 2022 will be defined in 2018. These agendas will lay down the highest attainable targets for each type of packaging or product-packaging combination. For the definitions of these highest attainable targets, the Framework Agreement lays down the following principles:

- a. prevention of waste of materials, and more energy-efficient use of raw materials (Reduce);
- b. raising the re-use percentage of packaging materials (Re-use);
- c. recovery of packaging material (Recycle);
- d. use of new materials with a lower environmental burden (Renew).

The ministerial regulation as referred to in Paragraph 3 may lay down the highest attainable targets as defined in the Sustainability Agenda for each type of packaging (or more specifically for each product-packaging combination) in the form of technical specifications. In order to clarify that those specifications should serve the purpose of improving packaging sustainability, Paragraph 4 lists the relevant principles. These principles are derived from those of the Framework Agreement for the Sustainability Agenda. The technical specifications that may be included in the ministerial regulation as referred to in Paragraph 3 should be intended to achieve one or several of the principles listed in Paragraph 4.

'Re-use' in the context of Paragraph 4(b) shall be defined as in Article 1.1 of the EMA.

A packaging that has been designed and manufactured in accordance with a technical specification as included in the ministerial regulation shall be deemed to fulfil an essential requirement of Annex II of the Packaging Directive if the specification relates to such specific requirement from the Annex to the Directive.

The ministerial regulation containing the technical specifications has been notified to the European Commission pursuant to the Directive on technical notifications prior to its enactment.

#### *Paragraph 5*

The European Commission has published various harmonised standards by Decision in accordance with Article 9(2)(a) of the Packaging Directive. Packaging that complies with that Decision shall be deemed to fulfil the essential requirements to which the relevant harmonised standard relates. In the Netherlands, these standards have been converted into NEN standards. A ministerial regulation as referred to in Paragraph 5 will refer to such national standards and indicate to which specific essential requirement each national standard relates.

#### *Paragraph 6*

This paragraph prohibits the provision to end-users at no cost (free) of unfilled packaging designated by ministerial regulation. A ministerial regulation will specify the conditions under which this prohibition will apply. That is necessary since the provision of free packaging will continue to be necessary in some cases. These include e.g. prohibiting the provision of free plastic carrying bags.

#### **Article 4**

Article 4 provides that a manufacturer or importer should be able to demonstrate when required that packaging made available on the market or placed on the market by him meets the requirements of the Decree with respect to packaging as included in Articles 2(1), (3) and (4) and 3(1), (2) and (5). To that end, the manufacturer or importer may present documents which demonstrate that the packaging is compliant with e.g. the applicable NEN standards (see Article 3(5)). If there is no relevant standard, the manufacturer may present other documentation of conformity with the essential requirements, such as inspection reports.

Paragraph 2 provides that a manufacturer or importer shall be required to take corrective action if it is found that made available or placed on the market does not meet or no longer meets the requirements of the Decree. This includes notifying the competent authorities. Where necessary, packaging must be taken from the market or recalled.

#### **Article 5**

##### *Paragraph 1*

This Article corresponds to Article 2 of the 2005 Decree. Pursuant to this paragraph, every manufacturer or importer is responsible for the separate collection or post-separation of all packaging provided by it to another person, as well as for packaging which it imports and then disposes of. Article 11(1) of the Waste Framework Directive<sup>38</sup> prescribes the introduction of waste separation for paper, metal, plastic and glass prior to 2015 pursuant to Article 10(2) of that Directive. Paragraph 2 of Article 10 provides that to ensure high-quality recycling, separate receipt shall be introduced where technically, environmentally and economically feasible.

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<sup>38</sup> Directive No 2008/98/EC of the European Parliament and of the Council of the European Union of 19 November 2008 on waste and repealing certain directives (OJ (EU) L 312).



The Framework Agreement lays down specific arrangements to allow post-separation for a number of streams, in light of the current situation in the Netherlands where post-separation is the best feasible option for some municipalities due to local circumstances, with post-separation producing the same results as source separation. The guiding principle is that the requirements from the Framework Agreement for the quality of the recycled material obtained through source separation should also be fulfilled in the case of post-separation. For certain packaging materials, such as metal and plastic, such post-separation may be sufficient to meet the requirements laid down in the present Decree. The Framework Agreement provides that source separation shall be the norm for paper and cardboard. No agreements have been made for glass and wood for lack of a need to do so. These materials are collected with source separation in the Netherlands.

### *Paragraphs 2 and 3*

A manufacturer or importer shall be responsible for the separate receipt, or receipt and post-separation, and recycling, of packaging waste that is released as commercial waste or household waste, to the extent that this is necessary to attain the percentages specified in Article 6. With respect to packaging released as household waste, the manufacturer or importer shall bear the financial responsibility not only for the processing, but also for the separate receipt or post-separation of the packaging. For packaging released as company waste, in contrast to packaging waste released as household waste, the cost of separate receipt and for receipt and post-separation shall be borne by the party who disposes of them.

### **Article 6**

This Article is partly the same as Article 4 of the 2005 Decree. It is however different in some respects. These are the following:

- Subparagraphs (a) and (b) of Paragraph 2 includes higher percentages for obligatory recycling of plastic and wooden packaging respectively. These higher percentages are as agreed in the Framework Agreement. These percentages are being increased annually from 2014. Article 13 adjusts these subparagraphs for plastic and wooden packaging for the last time in 2022, and repeals the percentages for the preceding years.
- Paragraph 4 provides that regardless of the percentages as referred to in Paragraph 1 and Paragraph 2(a), a certain quantity by weight, defined by ministerial regulation, of household plastic packaging waste shall be recycled in each calendar year. This requirement follows from Article 11(1) of the Framework Agreement. Paragraph 2.4.2 above of the general part of this explanatory memorandum explained that the Framework Agreement requires the total quantity of reused plastic material from households to remain above 85 kton per year. It was decided that this specific quantity should not be included in the Decree. Although the likelihood is low, the quantity made available on the market might fall to 85 kton or less, rendering it impossible to meet the requirement of recycling at least 85 kton. Specification of the quantity by weight in the ministerial regulation ensures that prompt adjustments to that quantity can be made if required.
- A ministerial regulation pursuant to Article 9.5.2(7) of the EMA will define requirements for recycled material to be counted towards the recycling percentages as referred to in Paragraphs 1 and 2 and the quantities as referred to in Paragraph 4. These requirements serve to ensure that the recycled material satisfies a specific level of quality. Article 9(5), (6) and (7) of the Framework

Agreement also includes this requirement for recycled material. These quality requirements are necessary to close the resource chain both from a resource perspective and economically.

### **Article 7**

That Article also includes a new requirement compared to the 2005 Decree. This Article provides that a manufacturer or importer must ensure the recycling of a particular percentage of the beverage cartons made available on the market by him during a given calendar year. The Framework Agreement provides that a pilot will be started in 2013 to assess the available options for collection and recycling of beverage cartons. Based on this pilot, a decision may be made whether or not to introduce a recycling requirement for beverage cartons. Since this percentage has not been defined as yet, it will be included in a ministerial regulation pursuant to Article 9.5.2(7).

### **Article 8**

This Article contains the obligation to submit a report to the Minister of I and E of the manner in which certain obligations of the Decree have been implemented. Paragraphs 1 and 2 correspond to Article 7(1) and (2) of the 2005 Decree, with Paragraph 1 referring to the relevant Articles of the Decree about which the report needs to be filed. Paragraph 2 provides that the report should be accompanied by documentation of the accuracy of the submitted information. It is important that these reports should be submitted uniformly and accurately. This provision aims to implement Article 13 of the Framework Agreement on monitoring.

The reporting requirement, like its counterpart in the 2005 Decree, applies only to a manufacturer or importer who makes available on the market, or imports and then disposes of, more than 50 000 kg of packaging annually.

Paragraph 3 provides that if a manufacturer or importer is part of a fiscal entity, the entity is subject to the reporting obligation of Paragraph 1. The concept of a 'fiscal entity' is as defined in Article 7(4) of the 1968 Turnover Tax Act. Paragraph 3 has been included because of the threshold as referred to in Paragraph 1, to ensure that businesses which are below the threshold individually but above it as a group, will submit the relevant reports as a group.

### **Article 9**

The 2005 Decree already contained an option, in Article 4a, to allow collective implementation of certain obligations arising from that Decree. Article 4a of the 2005 Decree has been inserted pursuant to the Decree of 9 January 2013 as cited above<sup>39</sup>. The explanatory memorandum to that Decree explained in detail why it was deemed necessary to allow the option of collective implementation of the 2005 Decree. This option of collective implementation is still deemed necessary with respect to the present Decree. The grounds for including collective implementation may be found in the explanatory memorandum to the Decree of 9 January 2013. Collective implementation is deemed possible in this Decree with respect to the requirements of collection and recycling of packaging waste and of reporting on the implementation of the Decree. The requirements of the Decree for the prevention of packaging waste (including the

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<sup>39</sup> See Footnote 5.

essential requirements) are aimed exclusively at individual manufacturers and importers.

It should be noted that Paragraph 2(b) is a new provision in comparison to Article 4a of the 2005 Decree. Subparagraph a of Paragraph 2 provides, as does the 2005 Decree, that some obligations arising from the Decree do not apply to a manufacturer or importer who pays a waste management fee pursuant to the directly applicable WMFPA. These are the obligations for collection and recycling, and the reporting obligation. Only manufacturers and importers who place more than 50 000 kg on the market annually (above-threshold) are required to pay a waste management fee to StAV pursuant to this directly applicable WMFPA. Experience has shown that these obligations can only be properly implemented collectively. The WMFPA therefore provides that StAV shall implement the relevant obligations for all manufacturers and importers. In light of the duties of StAV as laid down in the WMFPA, manufacturers and importers have no direct involvement in the fulfilment of these obligations other than by paying the waste management fee. Paragraph 2(a) provides that the relevant requirements of the Decree shall not apply to 'above-threshold' manufacturers and importers if they pay a waste management fee. If they demonstrate upon request, to the satisfaction of a supervisory authority, that they are paying this fee, then they will not need to demonstrate compliance with the obligations for collection and recycling or for reporting. This provision was already present in the 2005 Decree for above-threshold businesses. Paragraph 2(b) provides that below-threshold businesses (placing 50 000 kg or less on the market), which are not required under the directly applicable WMFPA to pay a waste management fee, do not have to fulfil the obligations for collection and recycling or for reporting. These obligations will not apply to either below-threshold or above-threshold businesses as long as this directly applicable status is in effect. When that is no longer the case, all manufacturers and importers will need to be able to demonstrate their compliance with the relevant obligations from the 2014 Decree. Pursuant to Article 15.39(2) of the EMA, the Minister of I and E may decide, after consulting with the Minister of Economic Affairs, to revoke the aforementioned directly applicable status. This decision may be made if the directly applicable status is unacceptably detrimental to the objectives of effective packaging waste management.

## **Article 10**

Paragraph 1 provides that the persons or legal entities to whom the reporting obligation pursuant to Article 10.40(1) of the EMA applies are required to report certain information about packaging. Article 10.40 of the EMA refers to the legal entities as referred to in Article 10.37(2)(a) or (b) of the EMA. These are the following persons or legal entities:

- a. persons or legal entities who are authorised pursuant to Articles 10.45 or 10.48 of the EMA to collect the relevant waste (this includes collecting companies on the VIHB list<sup>40</sup> or companies having a permit pursuant to the Waste Collection Decree);
- b. Persons or legal entities who are authorised to utilise or eliminate the relevant waste pursuant to Chapter 8 of the EMA or pursuant to a living environment permit. These include the facilities as referred to in category 28.1 of Annex I(C)

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<sup>40</sup> This relates to the reference described in Article 10.45(1)(a) of the EMA. Criteria for this reference are given in Waste Collecting, Transporting, Trading and Brokering Companies Regulation.

of the Living Environment Law Decree. These are facilities for:

1. storage of domestic waste or company waste with a relevant capacity of 5 m<sup>3</sup> or more;
2. processing, destruction, transshipment or dumping of waste, or depositing waste onto or into the soil through other means.

The Commercial Waste and Hazardous Waste (Reporting) Decree specifies the subjects of this reporting obligation in more detail.

The reporting obligation for packaging released as commercial waste applies also to collected and issued domestic waste, pursuant to Article 10.36 of the EMA. Such domestic waste is deemed equivalent to company waste pursuant to the aforementioned Article.

Reports shall be made to StAV, being the responsible authority for the implementation of the directly applicable WMFPA for packaging. This directly applicable status has been granted pursuant to Article 15.36 of the EMA.

As described in paragraph 2.3.4 and 2.4.5 of the general part of this explanatory memorandum, information about packaging released as commercial waste must be reported as part of the obligation to report on the implementation of the targets for utilisation and recycling as included in Article 6. The obligation to submit reports as included in Article 8 is aimed at manufacturers and importers of packaging. Pursuant to the directly applicable WMFPA, StAV is responsible for reporting. For information about the collection, utilisation and recycling, StAV relies on the parties who actually undertake the relevant activities. To improve the reliability of reports about collection and recycling, it has been decided that businesses responsible for the collection and recycling of packaging waste will be subject to a reporting obligation. The report pursuant to Article 10 comprises less information than must be reported under the aforementioned Article 10.40 of the EMA. Under Article 10, only the information necessary to obtain an accurate, complete report of the implementation of Article 6 of the Decree needs to be reported. The information considered necessary for this purpose includes:

- a. the date of delivery of the packaging waste;
- b. the customary designation of the material type of the packaging;
- c. the quantity of packaging;
- d. the manner in which the packaging is utilised (including recycling) or eliminated.

Paragraph 2 of Article 10 provides that the information reported to StAV shall be used only to submit the report pursuant to Article 8. This information must therefore not be used for other purposes.

The ministerial regulation will define more detailed rules for the manner of compliance with the reporting obligation. At a minimum, it will specify the deadline by which the report must have been filed. It has been agreed with the stakeholders that the regulation will require reports to StAV to be filed once per year. As explained in paragraph 4.3 of the general part of this explanatory memorandum, it is considered adequate for the time being that the information about packaging should be reported once yearly.

## **Article 11**

Article 11 contains a definition of the concept of "beverage". Since this concept is only relevant to the Articles on deposits for beverage packaging, this definition has not been included in Article 1 (Definitions). The definition of the concept of a "beverage" is the same as in the 2005 Decree.

Beverages are defined as liquids such as beers, soft drinks, waters, juices, dairy-based beverages (including yogurt drinks) and energy drinks. Liquids used e.g. for food preparation (such as oil, vinegar, dressings, etc.) are not beverages. Liquid foodstuffs intended primarily to be consumed with a spoon, such as soup, yogurt, custard, etc., are also not beverages pursuant to this Decree.

### **Articles 12 to 15**

These Articles on deposits for beverage packaging have been included in the present Decree pursuant to a parliamentary motion adopted by the Lower House of Parliament. Substantively, these Articles are identical to Articles 8 to 11 of the 2005 Decree.

One difference with respect to those Articles of the 2005 Decree is that the present Decree does not include the definitions of "medicinal beverage", "wine", "distilled spirits", and "mildly alcoholic beverage" in Article 1 (Definitions) but instead in Article 13 of the Decree. Article 13 describes the types of beverage packaging to which the obligation of charging deposits pursuant to Article 12(1) will not apply. This is because the terms above are relevant only for Article 13.

Packaging that is filled with a beverage immediately prior to sale, such as coffee mugs, beverage cartons and beverage packaging with a volume of 1 decilitres or less, are also exempted from the deposit requirement.

Exceptions are made for these products for a number of reasons, relating mainly to a lower environmental burden (beverage cartons) or to economic considerations. The last consideration applies e.g. to wines and spirits, where a deposit system would be very problematic due to the large variety of different products with relatively low turnovers per product-market combination. Transport distances of empty packaging are also relevant here. Spirits also typically have a slow turnaround, so that deposits would sometimes not be claimed until several years after purchase. In addition, this type of packaging ends up nearly entirely in household waste or in bottle banks instead of in scattered waste. Mildly alcoholic beverages are also exempt from the deposit requirement, since the packaging of this type of beverage, such as eggnog, light liqueurs and cream liqueurs, is almost never encountered in scattered waste and their circumstances of use are otherwise similar to those of spirits and wine. Beverage cartons pursuant to this Article are packaging consisting of at least 70 % paper or cardboard. This percentage of 70 % has been included to prevent manufacturers or importers from circumventing the deposit requirement by using packaging that does not consist almost entirely of paper or cardboard. Packaging that is filled with a beverage immediately prior to sale is often consumed and released on site. Therefore, it is not necessary to require deposits for this type of packaging.

Finally, product-packaging combinations that are made available to other persons in the Netherlands in relatively very low volumes are also exempt from the deposit requirement since the relative cost of implementing the deposit system for such small volumes would be very high.

Article 14 provides that the height of the deposit will be determined by ministerial regulation. Such regulation will be adopted when it is decided that the deposit provisions

should take effect. The original 2005 Decree included specific deposit amounts. An amendment was made to the 2005 Decree in 2010 to have the amounts henceforth decided by ministerial regulation<sup>41</sup>. This has been followed in the present Decree.

**Article 16**

Pursuant to this Article, the Ministry of I and E will undertake a review of the effects of the Decree by 2018. This review will focus mainly on the new parts of the Decree in comparison to the 2005 Decree as occasioned by the Framework Agreement and the Addendum.

**Article 18**

See the per-article section of the explanatory memorandum to Article 6.

**Article 20**

See paragraph 10 of the general part of this explanatory memorandum for more information about the entry into force of the Decree.

THE STATE SECRETARY FOR INFRASTRUCTURE AND THE ENVIRONMENT,

Wilma J. Mansveld

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<sup>41</sup> OJ. 2010, 324.