

OPINION OF ADVOCATE GENERAL
RUIZ-JARABO COLOMER
delivered on 6 May 2004¹

1. The Verwaltungsgericht Stuttgart (Administrative Court, Stuttgart, Germany) has referred four questions to the Court of Justice for a preliminary ruling on the interpretation of Articles 1(2), 7 and 18 of Directive 94/62/EC on packaging and packaging waste² and of Article 28 EC.

The questions focus on whether the aforementioned provisions prohibit Member States from favouring reusable drinks packaging over recoverable drinks packaging or from impeding the sale of soft drinks in recoverable packaging, in specific circumstances.

I — The national legislation

2. The Verordnung über die Vermeidung und Verwertung von Verpackungsabfällen

(Regulation on the Avoidance and Recovery of Packaging Waste, hereinafter ‘the Packaging Regulation’) of 21 August 1998,³ promotes various measures for achieving the objective of avoiding or reducing the impact of packaging waste on the environment. This legislation, which replaced the legislation of 12 June 1991,⁴ is intended to incorporate Directive 94/62 into national law; it defines reusable packaging as packaging designed to be used several times for the same purpose.

According to its provisions, producers and distributors of drinks bottled in non-reusable packaging are to charge a deposit on each item at every stage in the chain of distribution, although they may be released from that obligation, which includes the duty to take back and recover the empty bottles, by participating in a comprehensive system for managing packaging and packaging waste. However, if the overall proportion of drinks

1 — Language of the case: Spanish.

2 — European Parliament and Council Directive of 20 December 1994 (OJ 1994 L 365, p. 10). It has been significantly amended by European Parliament and Council Directive 2004/12/EC of 11 February 2004 (OJ 2004 L 47, p. 26), but the amendments have not affected the provisions whose interpretation is sought in this case.

3 — BGBl. I, p. 2379.

4 — BGBl. I, p. 1234. That legislation contained similar provisions concerning the compulsory deposit on non-reusable drinks packaging.

sold in Germany in reusable packaging falls below 72% and, at the same time, the proportion of reusable packaging achieved in 1991 in the specific soft-drinks sectors in which they operate⁵ is not reached, the economic operators lose that option, and must begin to charge a deposit and assume responsibility for recovering the bottles.

3. Paragraph 6 of the Packaging Regulation provides:

'1. Distributors shall accept the return of used empty sales packaging from final consumers, free of charge, at, or in the immediate vicinity of, the actual point of delivery, recover the packaging in accordance with the requirements of point 1 of Annex I and fulfil the requirements of point 2 of Annex I. ...

2. Producers and distributors shall accept free of charge at the place of actual delivery packaging returned to distributors under subparagraph 1.

3. The obligations under subparagraphs 1 and 2 shall not apply to packaging [covered by] a system which ... ensures that used sales packaging is ... collected from the private final consumer or in his vicinity, throughout the whole sales territory of the distributor ... [The] system ... shall recover packaging delivered to it, in accordance with the requirements of point 1 of Annex I ... Proof of participation in [such] a system shall be provided to the competent authority ... Coordination shall be arranged by the system operator and the public waste management authority in writing. ...

4. The competent authority may revoke its determination ... immediately where it establishes that there is a failure to comply with the requirements ... Where the recovery quotas specified in Annex I to this regulation have not been achieved in respect only of packaging made out of particular materials, the revocation shall apply only to such packaging. Subparagraphs 1 and 2 shall apply with effect from the first day of the sixth calendar month following publication of the revocation. ...'

5 — According to the information supplied by the claimants in the main proceedings in their written observations, the proportion of reusable packaging that year per type of drink, taken as a reference, was: mineral water, 91.33%; non-carbonated soft drinks, 34.56%; carbonated soft drinks, 73.72%; beer, 82.16%; and wine, 28.63%.

4. Paragraph 8(1) of the Packaging Regulation states in the following terms the rule that a deposit is compulsory for non-reusable drinks packaging:

‘Distributors who put liquids for consumption into circulation in non-reusable drinks packaging shall charge the purchaser a deposit of at least EUR 0.25 including turnover tax per item of packaging; where the net volume exceeds 1.5 litres, the deposit shall be at least EUR 0.50 including turnover tax. The deposit shall be charged by each further distributor at every stage in the chain of distribution until delivery to the final consumer. The deposit shall be repaid when the packaging is returned under Paragraph 6(1) and (2).’

5. Paragraph 9 regulates the exemption from the obligation to charge a deposit and the protection afforded to ecologically sound drinks packaging as follows:

‘1. Paragraph 8 shall not apply to packaging in respect of which the producer or distributor participates in a [comprehensive] system under Paragraph 6(3). Paragraph 6(4) shall apply *mutatis mutandis*.

2. If, for beer, mineral water (including spring water, table water and spa water), carbonated soft drinks, fruit juices (including fruit syrups, vegetable juices and other non-carbonated drinks) and

wine (except pearl wine, sparkling wine, vermouth and dessert wine), the combined proportion of drinks in reusable packaging falls below 72% in the calendar year in the geographical area to which this regulation applies, a new survey of the relevant proportions of reusable packaging shall be carried out for the 12 months following publication of the failure to achieve the required proportions. If this shows that the proportion of reusable packaging in Federal territory is below the proportion laid down under the first sentence, the decision under Paragraph 6(3) shall be deemed to be revoked throughout Federal territory in respect of the drinks categories for which the reusable proportion determined in 1991 is not achieved, with effect from the first day of the sixth calendar month following publication in accordance with subparagraph 3. The first and second sentences shall apply *mutatis mutandis* in respect of pasteurised milk for human consumption when the proportion of reusable packaging and polyethylene bag packaging falls below 20% in the calendar year in the geographical area to which this regulation applies.

3. Each year, the Federal Government shall publish in the Bundesanzeiger [Federal Gazette] the relevant proportions, for the purposes of subparagraph 2, of drinks sold in ecologically sound packaging.

4. Where the relevant proportion, for the purposes of subparagraph 2, of drinks packaged in ecologically sound drinks packaging is achieved again after a revocation, the competent authority shall make a new determination under Paragraph 6(3) on application or on its own initiative.'
8. On 2 July 2002 the German Government published in the *Bundesanzeiger* the results of a national survey of the overall proportion of packaging that was reusable, in accordance with Paragraph 9(3) of the Packaging Regulation. The data showed that, for all drinks except milk, the proportion, for the period between May 2000 and April 2001, was below 72%.

II — The facts in the main action

6. The claimants are medium-sized firms established in Austria which produce drinks. They export carbonated and non-carbonated soft drinks, fruit juices and table water in recoverable non-reusable packaging to Germany.

7. They participate, as licensees, in the system operated by 'Duales System Deutschland AG' ('Grüner Punkt'); according to a determination by the Baden-Württemberg Environment Ministry,⁶ this is a comprehensive system for managing used packaging and packaging waste, which operates throughout the territory within the meaning of Paragraph 6(3) of the Packaging Regulation. They were therefore exempt from charging their customers a sum by way of deposit on each drink.

9. At the same time, it announced that, from the first day of the sixth calendar month following publication, the exemption would be revoked in respect of the mineral water, beer and carbonated soft drinks sectors, the categories for which the specific proportions achieved in 1991 had not been reached.

Consequently, the undertakings concerned were required, from January 2003, to charge the deposit provided for in Paragraph 8(1) of the Packaging Regulation on most of the packaging for the drinks sold by them in Germany, and to accept the return of the used packaging and recover it.

10. The claimants consider that this measure constitutes a restriction on their exports to Germany, in breach of Community law.

⁶ — Decision of 22 December 1992.

III — The questions referred for a preliminary ruling

11. Before giving judgment on the merits of the case, the Verwaltungsgericht Stuttgart decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

1. On a proper construction of Article 1(2) of ... Directive 94/62 ... are Member States prohibited from favouring systems for reusing drinks packaging over recoverable non-reusable packaging by removing, where a Federal target for reusable packaging of 72% is not reached, the possibility of exemption from a return, management and deposit obligation laid down in respect of empty non-reusable drinks packaging by participation in a return and management system, so far as concerns drinks sectors in which the proportion of reusable packaging has fallen below the level determined in 1991?
2. On a proper construction of Article 18 of ... Directive 94/62 ... are Member States prohibited from impeding the placing of drinks in recoverable non-reusable packaging on the market by removing, where a Federal target for reusable packaging of 72% is not reached, the possibility of exemption from a return, management and deposit obligation laid down in respect of empty non-reusable drinks packaging by participation in a return and management system, so far as concerns drinks sectors in which the proportion of reusable packaging has fallen below the level determined in 1991?
3. On a proper construction of Article 7 of ... Directive 94/62 ... do producers and distributors of drinks in recoverable non-reusable packaging have a right to participate in an existing return and management system for used drinks packaging, in order to meet a statutory obligation to charge a deposit on non-reusable drinks packaging and accept the return of used drinks packaging?
4. On a proper construction of Article 28 EC are the Member States prohibited from adopting rules providing that where a Federal target for reusable drinks packaging of 72% is not reached, the possibility of exemption from a return, management and deposit obligation laid down in respect of empty non-reusable drinks packaging by participation in a return and management system, so far as concerns drinks sectors in which the proportion of reusable packaging has fallen below the level determined in 1991?

tion in a return and management system is removed so far as concerns drinks sectors in which the proportion of reusable packaging has fallen below the level determined in 1991?’

2. To this end this Directive lays down measures aimed, as a first priority, at preventing the production of packaging waste and, as additional fundamental principles, at reusing packaging, at recycling and other forms of recovering packaging waste and, hence, at reducing the final disposal of such waste.’

IV — The Community legislation

12. The provisions of secondary legislation of which the German court seeks an interpretation are Articles 1(2), 7 and 18 of Directive 94/62.

14. Article 7 governs the return, collection and recovery systems. It is worded as follows:

- ‘1. Member States shall take the necessary measures to ensure that systems are set up to provide for:

13. Article 1 provides:

- ‘1. This Directive aims to harmonise national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community.

- (a) the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives;
- (b) the reuse or recovery including recycling of the packaging and/or packaging waste collected,

in order to meet the objectives laid down in this Directive.

‘Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.’

These systems shall be open to the participation of the economic operators of the sectors concerned and to the participation of the competent public authorities. They shall also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and shall be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty.

V — Procedure before the Court of Justice

2. ...’

17. Written observations have been submitted in these proceedings, within the period prescribed by Article 23 of the Statute of the Court of Justice, by the claimant companies, the authority which is the defendant in the main action,⁷ the German, French, Italian, Netherlands, and Austrian Governments and the Commission.

15. Article 18 refers to the freedom to place packaging on the market in the following terms:

‘Member States shall not impede the placing on the market of their territory of packaging which satisfies the provisions of this Directive.’

At the hearing on 2 March 2004 oral argument was presented by the claimants’ representative, the defendant’s representative, the agent of the German Government, the agent of the Italian Government, the agent of the Netherlands Government and the agent of the Commission.

16. Article 28 EC, the primary legislation referred to by the national court, provides:

⁷ — *Land Baden-Württemberg*. In Germany, it is the Federal *Länder* which have competence to implement the Packaging Regulation.

VI — The first question

18. The Verwaltungsgericht Stuttgart wishes to know, first, whether Article 1(2) of Directive 94/62 precludes a Member State from favouring the reuse of drinks packaging over recycling and other forms of recovery, by applying rules such as Paragraphs 8(1) and 9(2) of the Packaging Regulation.

A — *The observations submitted*

19. According to the claimant companies, Directive 94/62 does not give preference to reusable packaging, so there must be no discrimination against other types of packaging. The Austrian Government expresses the same opinion.

20. *Land Baden-Württemberg*, the defendant in the main proceedings, claims that the national legislation does not favour the use of reusable packaging but, when the percentage of that packaging is below a certain limit, merely extends to non-reusable packaging the obligation to charge a deposit to which reusable packaging is subject; all types of packaging are therefore treated in the same way. Although the Community legis-

lature did not give priority to reusable packaging, because in 1994 there were no sufficiently advanced assessment techniques, it also did not prohibit such priority; the Member States may therefore provide for it if the information available to them so justifies. In Germany, the investigations carried out show that, in order to protect the environment, reusable packaging is better than recoverable packaging.⁸

The German Government adds that reuse systems avoid the production of waste and help to achieve the main priority of Directive 94/62. The Italian and Netherlands Governments and the Commission agree with these arguments.

21. The French Government believes that, in order to answer this question, the relevant provision is Article 5 of Directive 94/62, which does not prohibit Member States from favouring reusable-packaging systems, provided that they comply with Article 28 EC.

8 — It states that in the background document entitled 'Ökobilanz Getränkeverpackungen für alkoholfreie Getränke und Wein II, Phase 2', the Federal Ministry of the Environment found that, taking into account key indicators like the use of natural resources, the greenhouse effect and acidification, non-reusable glass containers and cans cause more problems than reusable-packaging systems.

B — Reply to the question

22. On looking at the wording of Article 1(2) of Directive 94/62, whose interpretation is required by the national court, it is apparent that it offers no basis for favouring reuse systems over recycling systems and other forms of recovery. The provision does not determine any hierarchical order; it gives top priority to preventing the production of packaging waste, while reuse, recycling and other forms of recovering packaging waste, which are mentioned immediately afterwards, are given equal standing. It is true that the eighth recital states that life-cycle assessments should be completed as soon as possible to justify a clear hierarchy between reusable, recyclable and recoverable packaging but, in practice, the studies carried out in certain countries do not appear to have reached final conclusions yet.

23. Nor is it possible to equate prevention and reuse, which are concepts defined in Article 3 of Directive 94/62. According to Article 3(4), prevention consists in reducing the quantity and the harmfulness for the environment of materials and substances contained in packaging and packaging waste, and also in reducing packaging at production process level and at the marketing, distribution, utilisation and elimination stages, in particular by developing 'clean' products and

technology. Article 3(5) describes reuse as any operation by which packaging, which has been conceived and designed to accomplish within its life cycle a minimum number of trips or rotations, is refilled or used for the same purpose for which it was conceived, with or without the support of auxiliary products, the reused packaging subsequently becoming packaging waste.

24. The basic rule for prevention is found in paragraph 1 of Annex II to Directive 94/62, which contains the requirements specific to the manufacturing and composition of packaging: it is to be so manufactured that the packaging volume and weight is limited to the minimum adequate amount to maintain the necessary level of safety, hygiene and acceptance for the packed product and for the consumer; that is to say, prevention concerns the design of the packaging and its manufacturing process, with the aim of reducing and avoiding at source the creation of waste. As we can see, the measures apply equally to reusable and recoverable packaging.

25. Article 5 of Directive 94/62 authorises public authorities to encourage systems for the reuse of packaging which can be reused in an environmentally sound manner, pro-

vided that they do so in conformity with the Treaty. I shall examine the context in which they may act, and establish whether legislation such as that at issue fulfils that requirement, when I consider the fourth question referred for a preliminary ruling.

A — *The observations submitted*

26. Article 1(2) of Directive 94/62 merely gives priority to the prevention of the production of packaging waste, and does not give precedence to reusable packaging, so that a Member State cannot use that provision as a basis for favouring the reuse of drinks packaging over recycling and other forms of recovery.

28. The claimants in the main action contend that the provisions of the directive, in particular Annex II, exhaustively cover the risks which packaging represents for the environment: the basic requirements for protection are not minimum clauses which may be completed by national law by means of the imposition of quotas for reusable packaging. Non-reusable packaging which is recyclable or recoverable in the form of waste-to-energy also satisfies the minimum requirements, so that it is not appropriate to restrict the sale of drinks in that kind of packaging. By taking the overall view that reusable packaging is ecologically sound and that non-reusable packaging is harmful to the environment, the German legislation discriminates against the latter and the drinks which it contains. The Austrian, French and Italian Governments agree with this assessment.

VII — The second question

27. By this question, it is sought to clarify whether Article 18 of Directive 94/62, which enshrines the freedom to place on the market packaging manufactured according to the directive's rules, precludes a Member State from impeding the placing on the market of drinks in non-reusable bottles, by applying provisions such as Paragraphs 8(1) and 9(2) of the Packaging Regulation.

29. *Land Baden-Württemberg* and the German Government consider, as the Commission does, that the question should be answered in the negative. The Netherlands Government suggests that national autho-

rities may impede the placing on the market of products in packaging which infringes legislation relating to reuse, to recovery or to deposit, collection and recovery systems.

31. For these reasons, I consider that Article 18 of Directive 94/62 is not the appropriate provision for analysing the effects which the application of rules such as Paragraphs 8(1) and 9(2) of the German Packaging Regulation may have on the free movement of goods.

B — *The reply to the question*

30. I agree with the defendant, the German Government and the Commission that Article 18 establishes the right to place on the market throughout the Community packaging which complies with the basic requirements set out in Article 9 and in Annex II, relating to the composition of packaging and its capacity to be reused or recovered, and merely prohibits discrimination against any kind of packaging which complies with the requirements of Directive 94/62.

The deposit, return and recovery system governed by the contested German legislation does not impede trade in drinks in non-reusable packaging; nor does it govern the composition of packaging, only the manner of distribution. Likewise, it does not prevent packaging from entering the market because of its technical characteristics; it simply sets the conditions for its collection and recovery.

VIII — **The third question**

32. The Verwaltungsgericht Stuttgart then asks whether Article 7 of Directive 94/62 grants producers and distributors of drinks in non-reusable packaging the right to participate in an existing system for the return and management of empty packaging, in order to obtain exemption from the statutory obligation to charge a deposit, to take back the used packaging and to recover it, in which case the national authorities would not be authorised to withdraw that option or to impose those burdens on them if the percentage of reusable packaging fell below a certain level.

A — *The observations submitted*

33. In the opinion of the claimant companies, the directive grants economic operators the freedom to participate in comprehensive

systems for managing packaging and packaging waste, and the national authorities cannot restrict that freedom. If they do so, as in Germany, a large number of drinks packaged in non-reusable packaging cease to be marketed. The Austrian, Italian and French Governments express the same view. The Netherlands Government has not submitted observations on this point.

num and maximum percentages in a first five-year phase,⁹ at the end of which the Council must fix, with a view to increasing them substantially, the corresponding percentages for a second five-year phase.¹⁰

34. *Land Baden-Württemberg* and the German Government suggest that the question should be answered in the negative. Otherwise, undertakings could refuse to participate in improved systems for collecting packaging and packaging waste, claiming that they have already joined an existing one. The Commission endorses this view.

36. In order to achieve the desired results, Article 7 requires the national authorities to facilitate the introduction of both systems for the return and/or collection of used packaging and packaging waste and systems for the reuse and recovery, including recycling, of the packaging collected; these measures are to form part of a policy covering all packaging. The systems must be open to the participation of the economic operators concerned and to the participation of the public authorities; they are to apply to imported products under non-discriminatory conditions, including the detailed arrangements and the tariffs for access; and they must be designed so as to avoid barriers to trade and distortions of competition, in accordance with the Treaty.

B — *The reply to the question*

35. After authorising the Member States, in Article 5, to promote systems for the reuse of packaging, in conformity with the Treaty, Directive 94/62 sets out, in Article 6, the recovery and recycling objectives, which are expressed in the obligation to achieve mini-

⁹ — Greece, Ireland and Portugal were allowed, in the light of the particular circumstances of each country, to set lower targets.

¹⁰ — These targets are set out in Directive 2004/12/EC. It is provided that, no later than 31 December 2007, the Parliament and the Council, acting on a proposal from the Commission, are to fix targets for the third five-year phase, from 2009 until 2014, a process which will be repeated every five years.

37. I consider that, under that provision, the national authorities may choose, for non-reusable drinks packaging, between making it subject to deposit, return and recovery or allowing it to be collected, by means of a comprehensive management system, from the consumer's home or near the place in which the distributor operates. Directive 94/62 leaves it to the Member States to choose one of these methods or a combination of the two, depending on the type of drink, for example, or on the amount to be charged as a deposit on each item according to the capacity of the different packaging. It should be remembered, however, that Article 6 of the directive provides for harmonisation of the minimum and maximum targets for recovery and recycling; also, Member States which intend to go beyond the targets set¹¹ must, as well as informing the Commission of its intentions, have the necessary capacity and implement the system while avoiding distortions of the internal market and without preventing other Member States from achieving the objectives.

38. Whenever a State sets itself an ambitious programme for managing non-reusable packaging waste, requiring high percentages in order to avoid uncontrolled dumping which damages the countryside, it tends to impose the obligation to charge a deposit, the formula which gives the best results because the consumers themselves return

the empty packaging in order to recover the amount left as a deposit. That system is likely to increase the collection rate, to reduce the pollution caused by non-reusable packaging that is thrown away and to increase the possibilities for recycling the material collected. With the introduction of a deposit, there is a greater rate of recovery of the components of the non-reusable packaging and a corresponding reduction in the pollution caused by empty bottles and cans. Where selection and collection, based on a deposit, is entrusted to professional systems, recovery adapted to the constituents makes it possible to save raw materials and to recover the recyclable material with a level of purity higher than that which results from the selective separation of domestic waste, in which errors in sorting occur more frequently.

39. In States in which ecological awareness is less developed, the public authorities are inclined rather to save the consumer the inconvenience connected with deposit and return systems, leaving it to him to separate the waste, with the implicit risk of mistakes, carelessness and lack of interest, and providing that the undertakings responsible for managing the waste are to collect it from the consumer's home or in the vicinity of the place in which the distributor operates. It is clear that the consequences of the two systems for the environment are very different, but they are both covered by Article 7 of Directive 94/62.

¹¹ — I do not know whether Germany is one of those countries.

40. When Member States decide to apply one or other of the systems to all or only certain types of packaging, they have to comply with Article 7, that is to say, they have to allow all producers and distributors of drinks in non-reusable packaging, including imports, to have access, at any time and without discrimination, to collection and management systems which replace their statutory obligation to take back and recover the empty packaging. However, I do not think that, on the basis of that provision, economic operators can claim a personal right to use the services of one of those systems in particular merely because they operate in the country or to continue to participate in it, when the national authorities decide that, from a certain date, a deposit will be charged on the purchase of certain drinks bottled in non-reusable packaging.

IX — The fourth question

42. It remains to be clarified whether Article 28 EC prohibits a Member State from prescribing that, where an overall proportion of reusable drinks packaging in the country of 72% is not reached, the economic operators in the sectors in which the proportion of reusable packaging is below the level set in 1991 are to lose the possibility of exemption from the obligation to charge a deposit on non-reusable bottles, to accept their return and repay the deposit and to recover them, by participating in a comprehensive packaging and packaging-waste management system.

A — *The observations submitted*

41. Therefore, the answer to be given to the national court must be that Article 7 of Directive 94/62 does not grant producers and distributors of drinks in non-reusable packaging a right to participate in an existing return and management system, when the national authorities replace it with a deposit system intended to ensure that the empty packaging is taken back, in order to improve selective recovery and contain uncontrolled dumping.

43. The claimant companies maintain that the German scheme providing for a reusable-packaging quota is a measure having equivalent effect to a quantitative restriction which indirectly hinders intra-Community trade and is not justified on grounds of environmental protection. The fixing of a maximum of 28% for non-reusable packaging in Germany makes it difficult for the claimants to increase their exports to that country; to this must be added the higher

price of drinks in non-reusable packaging, owing to the higher amount of the deposit,¹² which encourages the consumption of products in reusable packaging — by definition, of national origin — and the additional labelling required because of the compulsory deposit, which constitutes partitioning of the market. The Austrian, French and Netherlands Governments concur with this view.

45. According to the Commission, the question turns not so much on the mere revocation of comprehensive management systems in force up to a certain time, as on the transition from the old system to the new, in the light of the circumstances of the transition and the detailed rules of the two systems.¹³ Domestic legislation applicable without distinction to drinks produced in Germany and imported drinks is at issue, and the barriers to the free movement of goods within the Community which the disparities may create must be accepted, because they are justified by overriding requirements of environmental protection. The Commission adds that the Member States have to ensure that the transition between the existing comprehensive collection and management system and the new deposit, return and recovery system does not disproportionately hinder that freedom and avoids discrimination against imported products.

44. *Land Baden-Württemberg* and the German Government contend that Article 28 EC does not apply in the main proceedings. First, Article 5 of Directive 94/62 has exhaustively harmonised the use and promotion of reusable packaging and, second, the quota scheme in respect of reusable packaging and the deposit, return and recovery obligation are merely selling arrangements which do not affect the characteristics of the packaging and which apply equally, in fact and in law, to the sale of domestic and imported products. If the legislation under consideration were a barrier to trade, its retention would be justified by the need to satisfy overriding requirements of environmental protection. The Italian Government endorses these views.

B — *The reply to the question*

46. It is necessary to consider, first, the applicability of Article 28 EC in the present instance, because this has given rise to a difference of views among the parties who have submitted observations in these proceedings for a preliminary ruling.

12 — According to the information they provide, the purchase of a can of beer carries a deposit of 25 cents; if the same drink is bought in a reusable bottle, it is only necessary to leave 8 cents.

13 — After the end of the written procedure, the Court of Justice asked the Commission for clarification on this point. In its reply, which was lodged at the Registry on 16 January 2004, it explains that, under the second subparagraph of Article 7(1) of Directive 94/62, the transition between the old system and the new must occur only when the latter is operational.

1. The scope of the harmonisation effected by Directive 94/62

tion governing the free movement of goods.¹⁵

47. I do not agree with the parties who claim that Article 5 of Directive 94/62 has completely harmonised the use and promotion of reusable packaging.

49. However, Article 5 of Directive 94/62, which allows Member States to promote reuse systems, and requires them to do so in accordance with the Treaty, is an imprecise provision, the wording of which gives no indication as to the manner in which the national authorities are empowered to act or the direction that they may take. Reuse, that is to say, any operation by which packaging is refilled and used for the same purpose for which it was conceived, is defined in Article 3(5), a provision which affords no clarification for these purposes, so that it cannot be stated that the directive has harmonised the promotion of the use of reusable packaging.

48. In the Opinion delivered in *Commission v Denmark*,¹⁴ which concerned national legislation prohibiting the importation of beer and carbonated soft drinks in cans, I had the opportunity to express my views on the scope of the harmonisation undertaken by Directive 94/62 in the field. In that case, the packaging satisfied all the basic conditions set out in Annex II to the directive, so that the prohibition was clearly contrary to Article 18, which establishes the freedom to place packaging on the market in any of the Member States. I argued that national measures on the management of packaging and packaging waste had been harmonised when the directive was adopted. In such circumstances, according to the case-law, if the national legislation is compatible with the directive, it cannot be subject to a review of its compatibility with the primary legisla-

50. It is therefore necessary — in order to judge these measures — to refer to the primary legislation as a whole, and not only to the principles governing the free movement of goods. When public authorities grant, for example, subsidies or aid to encourage research and the development of investment for converting or improving packaging plants, for manufacturing reusable packaging or for establishing activities to

14 — [2002] ECR I-6943. See paragraphs 18 to 41. The action was ultimately abandoned.

15 — Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 18; and Case C-102/96 *Commission v Germany* [1998] ECR I-6871, paragraphs 21 and 22.

promote reuse, and when they adopt measures of an economic, financial or fiscal nature, they must observe the rules on State aid and competition, just as they have to comply with the Treaty provisions on tax matters.

judgment of the Court of Justice in *DaimlerChrysler*,¹⁷ paragraph 44 of which stated that the use in Article 4(3)(a)(i) of Regulation (EEC) No 259/93¹⁸ of the expression 'in accordance with the Treaty' could not be construed as meaning that a national measure that satisfied the requirements of that provision had to be subject to a review of its compatibility with the primary legislation on the free movement of goods.

Furthermore, if there is evidence that the decisions made by a Member State to promote reuse systems, even if they do not actually prohibit imports, constitute restrictions on the free movement of goods, they must be examined in the light of Articles 28 EC and 30 EC, because it is clear that, under Article 18 of Directive 94/62, Member States are not to impede the placing on the market of packaging which satisfies the essential requirements set out in Annex II to the directive, which have been the subject of harmonisation. There are, however, more subtle ways in which the State may act in order to bring about the same result.

52. There are various reasons why, in my view, this argument put forward by the defendant is unlikely to succeed. First, the Court of Justice completed that finding in the following paragraph of the judgment, adding that that expression likewise does not mean that all national measures restricting the shipments of waste referred to in Article 4(3)(a)(i) of Regulation No 259/93 must be systematically presumed to be compatible with Community law solely because they are intended to implement one or more of the principles referred to in that provision. Instead, in addition to being compatible with the regulation, such national measures must also comply with the rules or general principles of the Treaty to which no direct reference is made in the legislation adopted in the field of waste shipments. The same

51. In support of its argument that Article 28 EC is not applicable in this case, the German Government also pleads¹⁶ the

17 — Case C-324/99 *DaimlerChrysler* [2001] ECR I-9897.

16 — In its written observations it refers to points 15 to 21 of the defence and to points 9 to 11 of the rejoinder in Case C-463/01 *Commission v Germany* [2004] ECR I-11703.

18 — Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1).

assessment appears in the judgment in *Deutscher Apothekerverband eV*,¹⁹ paragraph 64 of which states that a national measure in a sphere which has been the subject of exhaustive harmonisation at Community level must be assessed in the light of the harmonising measure and not of the primary legislation,²⁰ even though the power conferred on Member States by Article 14(1) of Directive 97/7²¹ must be exercised with due regard for the Treaty, as is expressly stated in that provision.²²

the directive; whereas the former contains the principles governing the Member States and the specific measures which they may adopt, the latter merely states that such measures have to favour reusable packaging without harming the environment.

53. Secondly, in the *DaimlerChrysler* case the relevant Community legislation was a regulation which, by definition, as well as constituting a measure of general application binding in its entirety and directly applicable within the territory of the Union, is more specific than a directive, whose provisions are incorporated by the Member States into their respective national legal orders. It is true that the wording used in Regulation No 249/93 and in Directive 94/62 to refer to the Treaty is the same. However, there is a great difference between the content of Article 4(3)(a)(i) of the regulation and Article 5 of

54. There is no doubt that the Community legislature approves of actions of national authorities favouring packaging-reuse systems which indirectly result in the avoidance of waste, provided that, whether they are of an economic, financial, fiscal or other nature, they do not interfere with the proper functioning of the internal market.

55. I therefore consider that Article 5 of Directive 94/62, in itself, is not specific enough for it to be assessed on the basis of that provision whether provisions adopted by Member States to promote packaging-reuse systems that do not harm the environment are compatible with Community law, and it is not possible to complement it by referring to other provisions in the same legislation. The reference made by Article 5 to the Treaty as a whole makes it possible to review the compatibility of those national provisions with the primary legislation on the free movement of goods.

19 — Case C-322/01 [2003] ECR I-14887.

20 — Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947, paragraph 9, and *DaimlerChrysler*, cited above, paragraph 32.

21 — Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19).

22 — This provision allows Member States to introduce or maintain, in the area covered by the directive, more stringent provisions, compatible with the Treaty, to ensure a higher level of consumer protection.

2. Nature of the contested legislation: a measure having an effect equivalent to a quantitative restriction on imports or simply selling arrangements

57. The reasons for which I take this view are as follows.

56. The provisions at issue are: Paragraph 8(1) of the Packaging Regulation, according to which a distributor of drinks in non-reusable packaging must charge the customer a deposit and return it to him when he returns the empty packaging; and Paragraph 9(2), which suspends that measure if the undertaking responsible participates in a comprehensive management system and provided that the proportion of reusable packaging in Germany does not fall below 72%. If that threshold is crossed, the deposit, return and recovery obligation comes into effect in respect of drinks for which the percentage of reusable packaging is below that achieved in 1991. Apparently, this method of graduated control was accepted by the economic operators concerned, who were committed to ensuring that the rate of non-polluting reusable drinks packaging did not fall below the level achieved at that time.

58. First, Article 7 of Directive 94/62 requires the Member States to adopt the measures necessary to introduce systems for the return or collection of used packaging and packaging waste, and specifies that the systems have to be open to the participation of the economic operators affected. Under that provision, the national authorities may choose, for non-reusable drinks packaging, between making it subject to deposit, return and recovery or allowing it to be collected, by means of a comprehensive management system, from the consumer's home or near the place in which the distributor operates. However, the fact that in a country the continuation of the second option is made conditional on the overall volume of reusable bottles on the national market not falling below a specific proportion is, without a doubt, a source of legal uncertainty for the economic operators marketing their products in non-reusable packaging because, as long as the rate is kept above the fixed threshold, the undertakings operate year after year with the fear that they will not manage to reach that percentage, in which case, if, in the corresponding sector, the 1991 rate is not achieved either, they will have to arrange, in a very short space of time, to charge a deposit throughout the whole distribution chain.

According to Germany, the aim of these provisions is to promote the use of reusable packaging. In my view, this legislation makes it difficult to market in Germany drinks packaged by their producers in other Member States in non-reusable bottles.

This is a rule which, first, creates uncertainty for operators who have opted to participate

in a comprehensive system to manage packaging and packaging waste, because they do not know how long they can continue under the same conditions and, second, encourages them, in order to avoid that instability, to abandon that more comfortable alternative and charge a deposit on non-reusable packaging or use reusable packaging. Furthermore, there is the dissuasive effect which the rules are likely to have on those who are thinking of introducing their mineral water in Germany.

59. It must be added that undertakings excluded from the option proposed in Paragraph 9(1) of the Packaging Regulation where the proportion of reusable packaging falls below the prescribed minimum could return to that option if the use of reusable packaging rises again. If the aim of those rules is to promote reusable bottles, it does not make much sense to allow producers, when the proportion exceeds 72%, to use non-reusable bottles again, with the likely consequence that the percentage will fall again. It seems to me that the decision which undertakings take as to the type of packaging to use is sufficiently important for legislation of that kind not to make it very uncertain for undertakings which choose to enter the German market that the decision will continue to have effect.

60. Secondly, Article 7 of Directive 94/62 puts return and collection systems and reuse and recovery systems, including recycling systems, on an equal footing, the only proviso being that they should make it possible to achieve the objectives laid down. There is therefore no reason, if it is sought to promote one system, to prevent economic operators from participating temporarily in another because the prescribed proportion has not been reached.

61. Thirdly, the contested German legislation, although it applies to national operators and foreign operators in the same way, has a detrimental effect on the latter in particular. Drinks undertakings which intend to export part of their production tend to bottle it in non-reusable packaging because it costs less: if the reusable bottles are made of glass, they weigh more, which means higher fuel consumption and greater tonnage for transportation; furthermore, non-reusable packaging does not have to be taken back to its country of origin and the cost is halved, because the capacity of the returning vehicle may be used to carry other goods, and there is also no need to wash and sterilise bottles. The proof lies in the fact that, in practice, drinks producers from other Member States use a considerably higher proportion of plastic packaging than German producers. In that regard, the Commission refers to a survey carried out by the Gesellschaft für Verpack-

ungsmarktforschung in June 2001 to show that, in 1999, German producers of natural mineral water bottled 90% of their water in reusable packaging and the remaining 10% in non-reusable bottles, whereas 71% of exports to Germany were in non-reusable packaging. The claimants in the main proceedings state that, in the same year, 90% of imported drinks were sold in non-reusable packaging, whereas only 26% of drinks produced in Germany were sold in such packaging.

mind that, in some cases, the packaging is of a distinctive nature and its graphic representation has been registered as a trade mark.²³

63. In short, the contested legislation establishes specific conditions concerning the marketing of drinks in Germany, which are linked to percentages fixed arbitrarily, which ultimately depend on the preferences of consumers and which the economic operators can affect only if they agree to abandon non-reusable packaging and use reusable packaging. I do not think that the fact that, between 1994 and 2000, imports from other States increased is conclusive because, had it not been for those rules, the increase might have been greater.

62. There is another point which I think is important: in order to reach the German market, the distance which foreign drinks have to be transported is, as a rule, greater than that of drinks produced in Germany. It is true that there are exceptions, because there are no doubt producers in other Member States near the border with Germany; furthermore, some German producers cover many kilometres to reach all the distribution points, although they can avoid sending back empty packaging over long distances by participating in a reuse system, if they work with standardised bottles. I do not think it is realistic to suggest to foreign undertakings that they should stop using the packaging that they use in all other countries and adopt that officially approved for German undertakings, particularly bearing in

64. Nor do I agree that Paragraphs 8(1) and 9(2) of the German regulation at issue constitute merely selling arrangements, even though they apply without distinction to drinks bottled in Germany and to imported

23 — See the judgment in Case C-218/01 *Henkel* [2004] ECR I-1725. The Court of First Instance has given judgment in Joined Cases T-146/02 to T-153/02 *Deutsche SiSi-Werke v OHIM* [2004] ECR II-447, concerning the refusal to register as a three-dimensional mark a form of drinks packaging consisting in a stand-up pouch.

drinks. In the judgment in *Keck and Mithouard*,²⁴ the Court of Justice distinguishes between the provisions relating to the characteristics of the product and those concerning the selling arrangements in order to specify those rules which, while affecting nationals and non-nationals equally, cause barriers which make them measures of equivalent effect prohibited by Article 28 EC.

selling arrangements are not such as to hinder directly or indirectly, actually or potentially, trade between Member States within the meaning of the *Dassonville* judgment,²⁶ so long as those provisions apply to all traders operating within the national territory and so long as they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States.

In that decision, it confirmed that, in the absence of harmonisation of legislation, obstacles to free movement of goods which are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, rules that lay down requirements to be met by such goods constitute measures of equivalent effect, and that this is so even if those rules apply to all products without distinction, unless their application can be justified by a public-interest objective taking precedence over the free movement of goods.²⁵

It added that, provided that those conditions are fulfilled, rules of that kind are not such as to prevent the access of products from another Member State to the market or to impede access any more than they impede the access of domestic products. Such rules therefore fall outside the scope of Article 28 EC.

65. The Court then stated, contrary to what it had previously decided, that national provisions restricting or prohibiting certain

66. Since that judgment, in order to decide whether Article 28 EC prevails over legislation which applies without distinction to domestic and imported products, it is necessary to distinguish rules that lay down requirements to be met by such goods (such as those relating to designation, form, size, weight, composition, presentation, labelling,

24 — Joined Cases C-267/91 and C-268/91 [1993] ECR I-6097. See M. López Escudero: 'La jurisprudencia sobre la prohibición de las medidas de efecto equivalente tras la sentencia *Keck y Mithouard*', in *Gaceta Jurídica de la C.E. y de la Competencia*, D-28, pp. 47 to 94.

25 — Case 120/78 *Rewe-Zentral* [1979] ECR 649; *Cassis de Dijon*; and *Keck and Mithouard*, cited above, paragraph 15.

26 — Case 8/74 *Dassonville* [1974] ECR 837.

packaging) from those designed to govern the arrangements for selling them.

age and on misleading advertising;³⁵ a prohibition on producers and importers of alcoholic drinks in a State directing any advertising messages at consumers;³⁶ and legislation which provides traders may not make sales on rounds in a given administrative district, unless they also pursue their commercial activity at a permanent establishment situated in that administrative district, where they offer for sale the same goods as they do on rounds.³⁷

67. Since giving judgment in 1993 in *Keck and Mithouard*,²⁷ where it examined the prohibition in France against resale at a loss, the Court of Justice has considered the following, for example, to be selling arrangements: a rule of professional conduct, laid down by a professional body, which prohibits pharmacists from advertising outside the pharmacy quasi-pharmaceutical goods which they are authorised to sell;²⁸ the laying down of a maximum number of opening hours and periods of compulsory closure for shops;²⁹ the obligation not to open retail outlets on Sundays;³⁰ a rule which reserves the sale of processed milk for infants solely to pharmacies;³¹ a distribution system which reserves the retail sale of tobacco products to outlets authorised by the State;³² a rule prohibiting the broadcasting of televised advertisements for the distribution sector;³³ a prohibition against any sale which yields only a very low profit margin;³⁴ an outright ban on advertising aimed at children less than 12 years of

68. In the light of these examples, it is difficult to maintain that the German provisions contain merely selling arrangements, since the pressure they put on producers is directly related to the type of packaging in which the goods are marketed and they therefore form part of the measures relating to the characteristics of the products.

69. For the reasons given, I consider that the rules contained in Paragraphs 8(1) and 9(2) of the Packaging Regulation constitute a measure having an equivalent effect to a

27 — Cited above.

28 — Case C-292/92 *Hünernmund and Others* [1993] ECR I-6787.

29 — Joined Cases C-401/92 and C-402/92 *Tankstation't Heukske and Boermans* [1994] ECR I-2199.

30 — Joined Cases C-69/93 and C-258/93 *Punto Casa and PPV* [1994] ECR I-2355.

31 — Case C-391/92 *Commission v Greece* [1995] ECR I-1621.

32 — Case C-387/93 *Banchero* [1995] ECR I-4663.

33 — Case C-412/93 *Leclerc-Stplec* [1995] ECR I-179.

34 — Case C-63/94 *Belgapom* [1995] ECR I-2467.

35 — Joined Cases C-34/95 to C-36/95 *De Agostini and TV-Shop* [1997] ECR I-3843.

36 — Case C-405/98 *Gourmet International Products* [2001] ECR I-1795.

37 — Case C-254/98 *TK-Heimdienst* [2000] ECR I-151.

quantitative restriction, which is prohibited under Article 28 EC.

3. The protection of the environment in Germany as justification for the contested legislation

70. According to the settled case-law of the Court of Justice, national legislation which restricts or is liable to restrict intra-Community trade may be justified by considerations of public health and environmental protection of the kind relied upon by the German Government.³⁸ However, in that case, it must be proportionate to the objectives pursued and those objectives must not be attainable by measures which are less restrictive of such trade.³⁹

71. I am not persuaded that it is necessary, in order to protect the environment, to impose the rule that, every time the propor-

tion of reusable packaging in Germany falls below 72%, undertakings lose the possibility of exemption from charging a deposit on non-reusable packaging by participating in a packaging and packaging-waste management system if, in the sector in which they operate, the rate of reusable packaging does not reach the 1991 level.

72. First, it is not stated why 72% of the reusable packaging in circulation in the country is preferable, from an ecological point of view, to 60%, 70% or 80%, for example. Nor do I know the reasons of environmental protection for which the results achieved in 1991 should have been crystallised for the future, without allowing for adjustment factors according to the conduct and preferences of economic operators and consumers. It must be acknowledged that, if in that year the proportion of reusable bottles of mineral water was 91.33%, the margin available to producers bottling in non-reusable containers, in order to free themselves from the obligation to charge a deposit, under a comprehensive management system, is minimal. The same may be said of beer producers, with a limit of 82.16%, and of producers of carbonated drinks, whose quota is 73.72%, since it is mainly foreign producers who use that kind of packaging.

38 — Case 240/83 *ADBU* [1985] ECR 531; and Case 302/86 *Commission v Denmark* [1988] ECR 4607, paragraph 9.

39 — *De Agostini and TV-Shop*, cited above, paragraph 45; Case C-189/95 *Franzen* [1997] ECR I-5909, paragraph 75, and Case C-389/96 *Alier-Waggon* [1998] ECR I-4473, paragraphs 18 to 20.

As is well known, the Court of Justice found, in the judgment in *Commission v Denmark*,⁴⁰ that a restriction of the quantity of products which could be marketed by importers was disproportionate to the objective pursued. In that case, the Danish legislation allowed producers to sell up to 3 000 hectolitres of beer and soft drinks a year in non-approved containers, provided that these were reusable and that a deposit was charged on each.

fluctuation which may destabilise the habits of users, producers and distributors — not to mention the retrograde step that this entails for management of packaging waste and conservation of the countryside.

73. Second, if it really is a question of preventing, albeit indirectly, the production of packaging waste by promoting reusable packaging, I cannot see why it should be necessary, when the 72% rate is achieved again, to resurrect the possibility of exemption from charging a deposit on non-reusable bottles. Certainly, the charging of a deposit achieves a much higher percentage of return of empty packaging by the consumer who, furthermore, soon becomes resigned to paying it. Once that system has been put in place, which is not easy, I wonder about the advantages of going back, with the foreseeable consequence that the use of reusable packaging will go down again, causing

74. Third, in its eagerness to promote reusable bottles in order to protect the environment from the consequences of recycling and other recovery of non-reusable packaging waste, the German Government does not appear to have taken account of other factors (such as the cleansing and sterilisation treatments applicable to the reusable packaging, fuel consumption, emissions into the atmosphere, and the wear and tear of communication routes, if the transport distance is over a certain number of kilometres, with the inevitable increase in traffic density and the risk of accidents) which counterbalance the alleged ecological advantages, so that non-reusable packaging may be an interesting alternative from an environmental point of view.

75. Fourth, under Article 7 of Directive 94/62, Member States are to ensure that systems are set up to provide for the return or collection, and reuse or recovery, of packaging; these systems are to be open to

⁴⁰ — Cited above, paragraph 21.

the participation of the economic operators concerned, they are to apply to imported products under non-discriminatory conditions, and they are to be designed so as to avoid barriers to trade or distortions of competition, in conformity with the Treaty. I consider that there is no justification, once the collection systems are in place in a State, for the public authorities temporarily to prevent certain economic operators from competing, because the nationals of that State have changed their drink consumption habits and prefer to buy them in non-reusable bottles, and to continue to prevent them until the trend is reversed. This constitutes a restriction on the free movement of goods which is not in correct proportion to the insignificant advantages that it represents for the protection of the environment. In my view, Directive 94/62 contains sufficient devices to allow the German authorities to guarantee that protection by adopting sufficiently stable legislation which permits exporting undertakings to plan in the medium and long term the kind of packaging which is suitable for marketing mineral water in Germany.

recovering the amount paid. Otherwise, since most imported drinks are sold in non-reusable packaging, there would be the risk of creating barriers to trade, and there would in addition be distortions of competition if, at the same time, the reusable bottles used by most domestic producers were returned under more favourable conditions. Nor would it be advisable to set up a large number of separate deposit systems, each one with its own requirements, which would not cover the whole of the territory, because that would make it difficult for foreign producers and importers of packaged drinks to enter the market, quite apart from the fact that small and medium-sized undertakings in the other Member States would probably not have sufficient resources to adapt their packaging to satisfy those conditions.

However, if they decide to extend the charging of a deposit to all non-reusable packaging, I agree with the Commission that an adequate number of places must be provided for returning the packaging and

76. Finally, charging a deposit on non-reusable packaging does not appear to be a suitable way of promoting the use of reusable packaging. What is certainly achieved is that the buyer or any other person involved returns the empty packaging in order to recover the deposit, which is something, but, when faced with the need to pay for either kind of packaging, the consumer usually opts for the packaging he finds more convenient

and not necessarily for the packaging which harms the environment less.

77. It is clear from these arguments that the German legislation at issue cannot be justified by protection of the environment as an overriding requirement restricting the application of Article 28 EC, because it does not comply with the principle of proportionality.

78. Article 28 EC should therefore be interpreted as prohibiting a Member State from providing that, where an overall proportion of reusable drinks packaging in the country of 72% is not reached, the economic operators in the sectors in which the proportion of reusable packaging is below the level set in 1991 are to lose the possibility of exemption from the obligation to charge a deposit on non-reusable bottles, to accept their return and repay the deposit, and to recover them, by participating in a comprehensive packaging and packaging-waste management system.

X — Conclusion

79. In the light of the foregoing considerations, I propose that the Court of Justice give the following reply to the questions referred for a preliminary ruling by the Verwaltungsgericht Stuttgart:

- (1) Article 1(2) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste merely gives priority to the prevention of the production of packaging waste, and does not give precedence to reusable packaging, so that a Member State cannot use that provision as a

basis for favouring the reuse of drinks packaging over recycling and other forms of recovery.

- (2) Article 18 of Directive 94/62 is not the appropriate provision for analysing the effects which the application of rules such as Paragraphs 8(1) and 9(2) of the German Packaging Regulation may have on the free movement of goods.
- (3) Article 7 of Directive 94/62 does not grant producers and distributors of drinks in non-reusable packaging a right to participate in an existing return and management system, when the national authorities replace it with a deposit system intended to ensure that the empty packaging is taken back, in order to improve selective recovery and contain uncontrolled dumping.
- (4) Article 28 EC prohibits a Member State from providing that, where an overall proportion of reusable drinks packaging in the country of 72% is not reached, the economic operators in the sectors in which the proportion of reusable packaging is below the level set in 1991 are to lose the possibility of exemption from the obligation to charge a deposit on non-reusable bottles, to accept their return and repay the deposit, and to recover them, by participating in a comprehensive packaging and packaging-waste management system.