

E-commerce packaging responsibility



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1. Scope

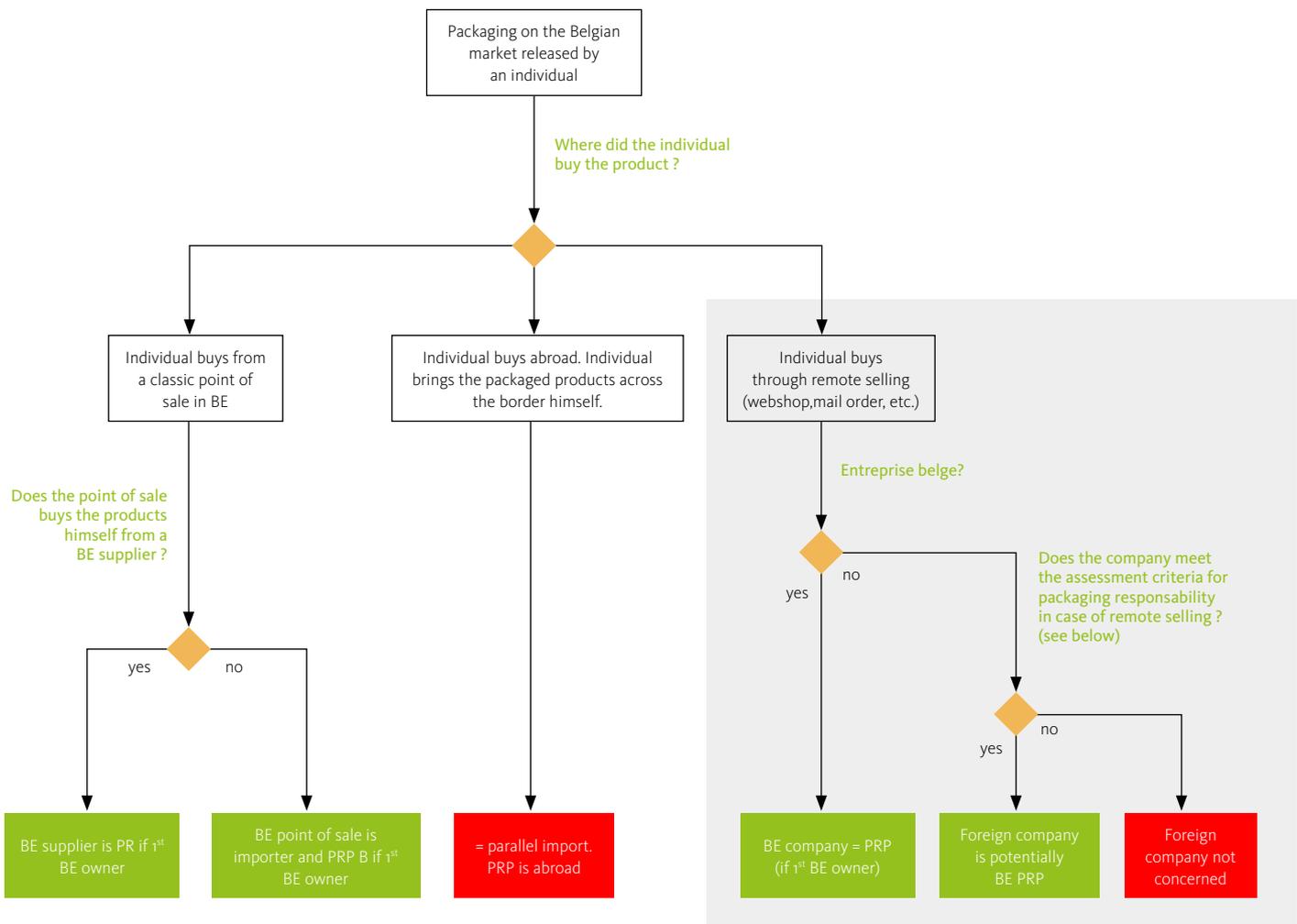


This memo offers you an analysis of the packaging responsibility for the packaging that is released on the Belgian market as a result of e-commerce activities in Belgium to **individuals**. In the event that the Belgian customer is a **company** with a Belgian company registration number, the usual rules of packaging responsibility apply, not the rules of this memo.

The aim is to establish assessment criteria that identify the packaging responsibility within e-commerce to Belgian individuals (see point 3.2).

Below you will find a schematic overview of the scope of the memo :

Finally, at the end you will find a schematic presentation of the assessment criteria that maps the process for identifying the party responsible for packaging (see point 4).



PRP = party responsible for packaging

2. Context



According to Comeos, internet sales (“e-commerce”) in 2016 in Belgium, accounted for EUR 6.4 billion, or 8% of the total turnover of Belgian trade. However, in 2016, 53.7% of what Belgians spent online went abroad, either to foreign webshops, or to Belgian traders operating from abroad¹. This would mean an increase of 16% compared with 2013.

The growing popularity of e-commerce raises questions about the packaging responsibility associated with the online sale of household and commercial products.

Today, e-commerce companies based abroad often still avoid their packaging responsibility because they interpret the existing legal framework too restrictively. Thus, Article 2, 20°, b) of the Cooperation Agreement of 4 November 2008 on the prevention and management of packaging waste (“CA”) defines the “party responsible for packaging” as follows:

“b) where products released on the Belgian market have not been packaged in Belgium, any party importing the packaged goods (or that has them imported) and that does not unpack them or use them itself”.

If an overly restrictive interpretation of Article 2, 20°, b) CA is applied, e-commerce companies based abroad that sell or offer for sale and deliver household or commercial products via the internet in Belgium would not have any packaging responsibility.

The Explanatory Memorandum to the CA nevertheless specifies that the legislator kept in mind at all times that “*one and only one party responsible for packaging*” must be designated for each packaging. Where imports are concerned, the Explanatory Memorandum to the CA states that, when a foreign company conducts its sales activities on Belgian territory, this foreign company is the party responsible for packaging, not the Belgian customer. Door-to-door selling and sales at fairs and exhibitions are cited as examples. A company based abroad that sells or offers and delivers household or commercial products via the internet in Belgium fits this picture perfectly.

¹ Source: Comeos, “Online Handel: meer dan de helft vloeit naar het buitenland”, press release of January 27, 2017.



The basic question is therefore whether the e-commerce company is conducting commercial activities on Belgian territory. This will determine the packaging responsibility.

This is an application of the principle whereby those who are responsible for releasing packaging onto the Belgian market must also be ultimately responsible for the costs associated with the obligation to take their packaging back.

Ruling differently in this regard would be contrary to the Cooperation Agreement and constitute :

an unfair trading practice because of unfair competition, since e-commerce companies based abroad would not be responsible for financing the obligation to take back their packaging that is released onto the Belgian market, while companies based in Belgium that are active offline/online in remote selling as a result of which packaging is released onto the Belgian market do so.

discriminatory treatment, since similar situations would be treated unequally within the category of “remote selling” because e-commerce companies based abroad would not be responsible for financing the obligation to take back their packaging that is released onto the Belgian market, while other foreign companies active in remote selling (such as mail-order companies) that release packaging onto the Belgian market do so.

3. Assessing packaging responsibility



3.1. Introduction

Below follows an overview of the assessment criteria applied to determine whether a company that is active in e-commerce to Belgian individuals that results in packaging being released onto the Belgian market is subject to the packaging responsibility provided for by Article 2, 20°, b) CA.

The establishment of any packaging responsibility for packaging released onto Belgian territory through e-commerce must always be assessed on a case-by-case basis.

3.2. Assessment criteria

3.2.1. There is e-commerce to Belgian individuals that results in packaging being placed on the Belgian market

The website in question effects a remote sale to a Belgian consumer that results in household and/or commercial packaging being released on the Belgian market.

3.2.2. Belgian company registration number

If the e-commerce company has a Belgian company registration number, it may be inferred that the e-commerce company is conducting commercial activities on Belgian territory. There is a strong presumption.

The Belgian company registration number is the number under which the company is registered with the Crossroads Bank for Enterprises (Banque-Carrefour des Entreprises / Kruispuntbank van ondernemingen) (see link: [Opzoeking in de kruispuntbank van ondernemingen \(KBO\) | KBO Public Search](#)).

The company registration number can usually be found on the invoices, order confirmations and/or purchase documents of the product or service of the e-commerce company.

A distinction can be made between different companies with a Belgian company registration number :

- Belgian company ;
- foreign company with address in Belgium ;
- foreign company without address in Belgium.

3.2.2.1. Belgian company

This refers to e-commerce companies with their registered office in Belgium. These companies must be regarded as parties responsible for packaging.

3.2.2.2. Foreign company with address in Belgium

Further checks must be made to determine whether this involves:

- A foreign company with a branch or place of business in Belgium. If the e-commerce company is a foreign company and has a branch or place of business with an address in Belgium, the latter must be regarded as the party responsible for packaging.
- A foreign company with a representative office or liaison office in Belgium. If the e-commerce company is a foreign company but has a representative office in Belgium, there is still a strong presumption that the e-commerce company is conducting commercial activities on Belgian territory and is therefore the party responsible for packaging. This presumption is further strengthened by the presence of other elements specified from point 3.2.3.1, but conversely can be refuted by the complete absence of such elements.

3.2.2.3. Foreign company without address in Belgium

If the e-commerce company is a foreign company without an address in Belgium but with a Belgian company registration number, there is still a strong presumption that the e-commerce company is conducting commercial activities on Belgian territory and therefore is the party responsible for packaging. This presumption is further strengthened by the presence of the other elements specified from point 3.2.3.1, but conversely can be refuted by the complete absence of such elements.

3.2.3. No Belgian company registration number

If the e-commerce company does not have a Belgian company registration number, it must be determined whether this foreign company is conducting commercial activities on Belgian territory.

3.2.3.1. There is a Belgian domain name extension: extension “.be” or other exclusively Belgian domain name extensions

Having a domain name extension “.be” or another exclusively Belgian domain name extension creates a strong presumption that the Belgian market is being targeted by the website in question and that it is conducting commercial activities on this market, and must therefore be regarded as the party responsible for packaging. This also applies if the website with a Belgian domain name extension routes through to a website with a foreign domain name extension where the actual sale then takes place.

3.2.3.2. A non-country-based extension is used (“.com”, “.eu”, “.org”, etc.)

If a non-country-based extension (“.com”, “.eu”, “.org”, etc.) is used, but the website is explicitly aiming at the Belgian market/consumer, there is also the presumption that the Belgian consumer/market is the target of the website in question website and that the e-commerce company is therefore conducting commercial activities on Belgian territory.

This mainly involves communication and promotion directed at the Belgian market/consumer, for example :

- Advertising aiming specifically at the Belgian consumer/market ;
- Reference to a Belgian contact address/phone number/fax number ;
- The country preference that has to be set on the website refers to Belgium ;
- The range of products offered for sale is tailored to the Belgian market.

If a non-country-based extension (“.com”, “.eu”, “.org”, etc.) is used, and the website is not explicitly aimed at the Belgian market/consumer, there is no direct presumption that the e-commerce company is conducting commercial activities on Belgian territory. Nevertheless, it may still be deduced from other indicators that the website is directed at the Belgian market/consumer (see point 3.2.4).

3.2.3.3. There is a foreign domain name extension (“.nl” “.fr”, “.de”, etc.)

There is no direct presumption that the e-commerce company is conducting commercial activities on Belgian territory. Nevertheless, it may still be deduced from other indicators that the website is directed at the Belgian market/consumer (see point 3.2.4).

3.2.4. Other indicators

If there is no presumption that the e-commerce company is conducting commercial activities on Belgian territories on the basis of points 3.2.3.2 and 3.2.3.3, it may still be deduced from one or more of the following indicators that the website is directed at the Belgian market/consumer.

3.2.4.1. Communication and promotion

The communication and promotion tools used by the e-commerce company may be an indication that the e-commerce company is conducting commercial activities on Belgian territory, for example:

- Any form of advertising aimed specifically at the Belgian consumer/market;
- Reference to a Belgian contact address/phone number/fax number;
- The country preference that has to be set on the website refers to Belgium;
- The preferred languages are at least two of the three official languages in Belgium;
- The range of products offered for sale is tailored to the Belgian market;
- The terms of payment indicate that the sales activities are tailored to the Belgian market.

3.2.4.2. Payment to a Belgian account number

If payment is made to a Belgian account number, this is a clear indication that the e-commerce company is conducting commercial activities on Belgian territory.

3.2.4.3 General and/or special terms and conditions of sale

The general and/or special terms and conditions of sale of the e-commerce company suggest that Belgian law applies and the Belgian tribunals and courts have jurisdiction with regard to relations between the company and third parties. This is a clear indication that the e-commerce company is conducting commercial activities on Belgian territory.

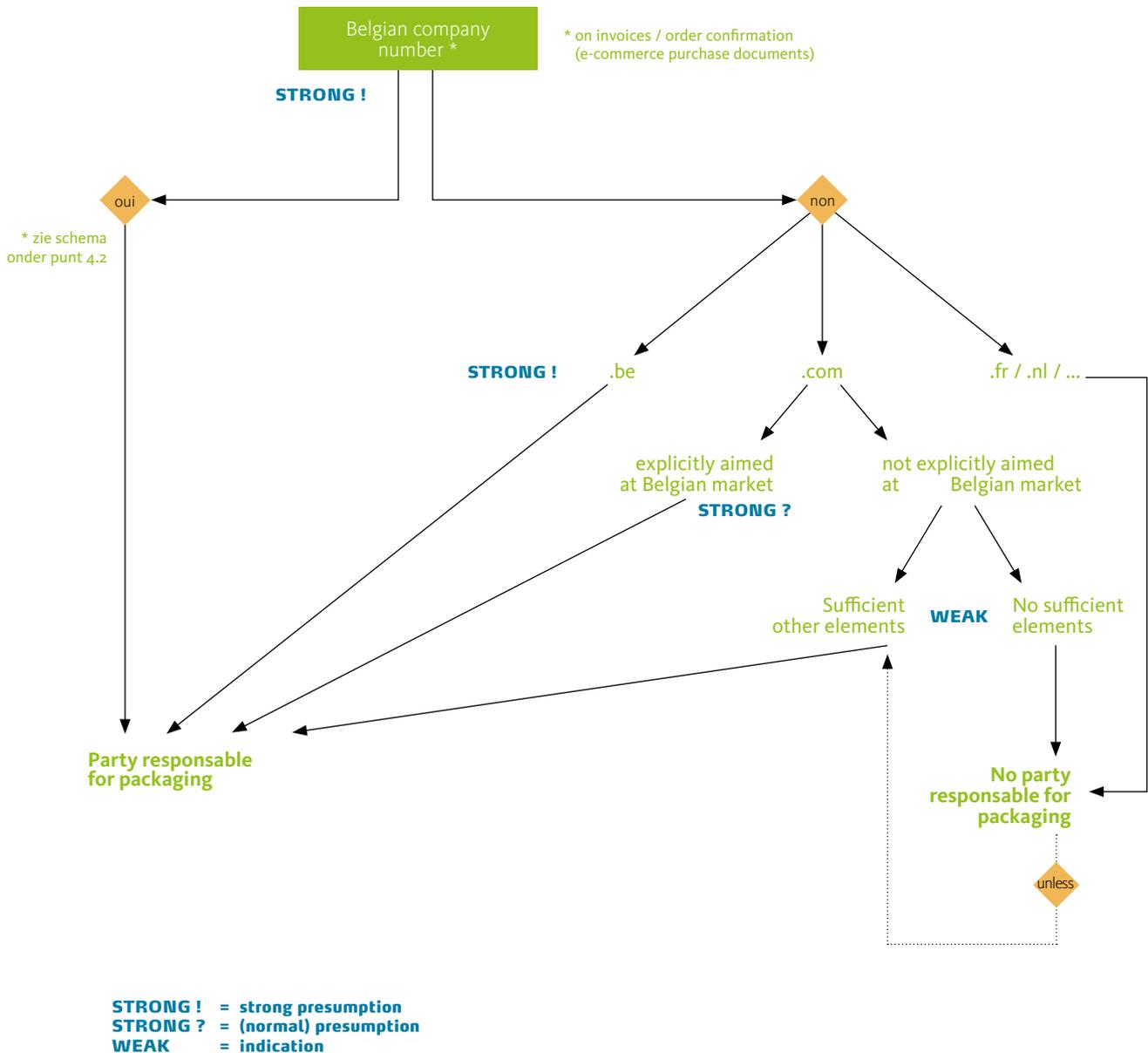
3.2.4.4. Delivery in Belgium

The fact that Belgium is added to the list (on the website) of countries to which delivery is possible may be an indication that the e-commerce company is conducting commercial activities on Belgian territory, but this element is not in itself sufficient to conclude this. Other indications are therefore required.

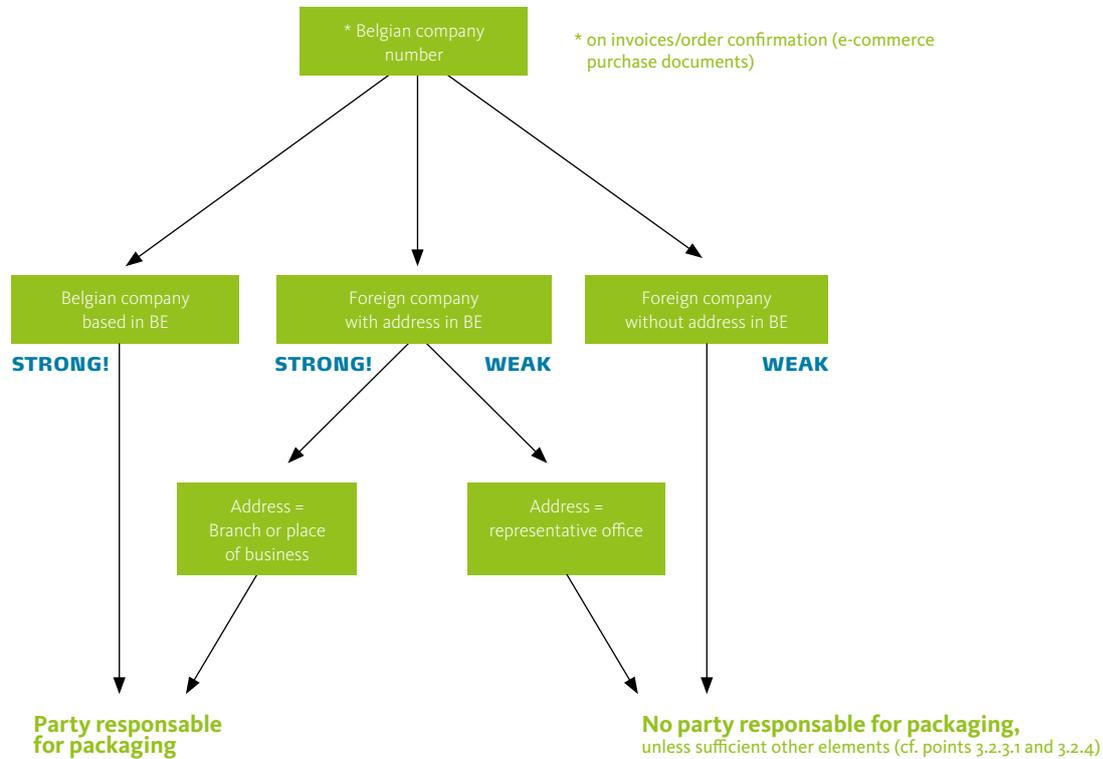
4. Schematic overview of assessment criteria



4.1. Global overview



4.2. Details of Belgian company registration number (see 3.2.2)



Do you still have questions?

Please surf to www.fostplus.be (part enterprises),
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