

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 30 October 2001

on the waste disposal system for car wrecks implemented by the Netherlands

(notified under document number C(2001) 3064)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2002/204/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions <sup>(1)</sup> and having regard to their comments,

Whereas:

### 1. PROCEDURE

- (1) By letter dated 19 September 2000 (registered on 25 September 2000 under A/37820), the Netherlands authorities notified the Commission that they intended to extend the waste disposal system for car wrecks. The original system and the first extension were approved in 1995 and 1998 respectively, as the Commission concluded that the measure did not constitute aid within the meaning of Article 87(1) of the Treaty <sup>(2)</sup>.
- (2) By letter dated 9 October 2000 (D/55102), the Commission requested further information. The Commission reminded the Netherlands authorities of this request by

letter dated 7 December 2000 (D/56086). The Netherlands authorities replied by letter dated 8 December 2000 (registered on 11 December 2000 under A/40432). A further request for information was sent by letter dated 10 January 2001 (D/50042). The Netherlands authorities replied by letter dated 19 January 2001 (registered on 24 January 2001 under A/30634).

- (3) By its decision of 28 February 2001 the Commission initiated the procedure laid down in Article 88(2) of the Treaty with respect to the waste disposal system. By letter dated 2 March 2001 (D/286578), the Commission informed the Netherlands of this decision. After having asked for more time (letter dated 29 March 2001, registered as A/32658 on 29 March 2001), which was granted by letter dated 5 April 2001 (D/51465), the Netherlands reacted to the decision by letter dated 5 June 2001 (registered on 13 June 2001 as A/34642).
- (4) The decision was published in the *Official Journal of the European Communities* <sup>(3)</sup> and interested third parties were invited to submit their comments on the aid. The Commission received 10 comments, though two of them were received only after the period of one month from the date of publication had expired. The Netherlands was asked to comment on these letters by letters dated 21 May 2001 (D/52087) and 16 July 2001 (D/52884). The Netherlands sent its comments on the comments from interested parties by letter dated 20

<sup>(1)</sup> OJ C 111, 12.4.2001, p. 2.

<sup>(2)</sup> Letter D/17343 of 28 December 1995 concerning State aid NN 93/95 and letter D/7090 of 17 August 1998 concerning State aid N 656/97. In paragraph 15 of its guide to procedures in State aid cases, the Commission wrote that notification is required whenever there is a sufficient likelihood in the light of the case law of the Court of Justice and the Commission's practice that a measure involves State aid (Competition law in the European Communities, Volume IIA, Rules applicable to State aid, European Commission 1998). Footnote 8 to this paragraph adds that the Commission is willing to give informal advice on whether notification is required.

<sup>(3)</sup> See footnote 1.

June 2001 (registered on 22 June 2001 as A/34929) and by letter dated 3 August 2001 (registered as A/36368 on 7 August 2001). Two meetings between the Commission, the Netherlands authorities and ARN, the central organisation in the waste management system (see below), took place on 21 March 2001 and 4 May 2001 respectively.

- (5) The Dutch authorities took the view that the prolongation of the system could not await the Commission's final decision and declared the new system generally binding in view of the expiry of the previous period.

**2. DETAILED DESCRIPTION OF THE MEASURES**

- (6) The aim of the waste disposal system is to ensure that the companies that manufacture and sell cars also take responsibility for a high degree of recycling and reuse of car wrecks. Because of the significant environmental consequences involved, the European Parliament and the Council adopted a Directive on end-of-life vehicles (hereinafter the car wrecks Directive) <sup>(4)</sup>. The Directive sets an objective for 2006 of 85 % reuse and recovery and 80 % reuse and recycling for all end-of-life vehicles <sup>(5)</sup>. The corresponding figures for 2015 are 95 % and 85 %. Having reached the first objective, the participants in the Dutch system want to realise the latter objective well before 2015. In line with the principle of producer responsibility and the 'polluter pays' principle, an important responsibility for reaching these objectives lies with car manufacturers and importers.
- (7) In the early 1990s, several sector organisations <sup>(6)</sup> combined to form the non-profit Foundation Car & Recycling (Stichting Auto & Recycling, hereinafter the SAR) and developed a nationwide collection and recycling system for car wrecks <sup>(7)</sup>. For the implementation and management of the recycling system, the SAR set up a private limited liability company, Auto Recycling Nederland BV (hereinafter ARN), that is 100 % owned by the SAR. ARN is responsible for the organisation and logistic administration of the recycling of car wrecks. This system became operational on 1 January 1995.
- (8) The core of the system is a voluntary agreement among all manufacturers and professional importers of cars in the Netherlands (combined within the RAI). They agreed to pay a charge for each car that is registered for the first time in the Netherlands. The charge is collected by ARN,

which uses the resources for the cost of dismantling the car wrecks and recycling the collected materials, including transport. The agreement is concluded each time for a period of three years. The notified agreement, dated 19 July 2000, stipulates that the car manufacturers and importers pay EUR 45 (NLG 99,17) per car that is being registered in the Netherlands, regardless of brand or type <sup>(8)</sup>. For the first two periods, the charge was EUR 113 (NLG 250) and EUR 68 (NLG 150) per car respectively.

- (9) The charge of EUR 45 (NLG 99,17) per car is based on a complex calculation. The most important variables in this calculation are the average composition of a car wreck, the average cost of dismantling and recycling a car wreck, the expected number of car wrecks and the expected number of new cars registered in the Netherlands. Another important variable is the extent to which the existing reserves are used for current dismantling premiums. The charge is a flat rate that applies to any brand or type of car, because, according to ARN, the cost of dismantling and recycling is about the same for each car wreck and differentiation would not really be possible.
- (10) In order to ensure that all car manufacturers and importers pay this charge, the Netherlands Government has declared the agreement generally binding on all manufacturers and importers in the market for the period 1 January 2001 — 1 January 2004 <sup>(9)</sup>. The Minister for Housing, Planning and the Environment can grant an exemption if the requesting party ensures disposal of the car wrecks in at least an equivalent way to disposal under the system that has been declared generally binding <sup>(10)</sup>.
- (11) Premiums are paid only for parts of car wrecks which according to the Netherlands authorities cannot be dismantled/collected and recycled in an economically viable manner. At present ARN grants waste disposal premiums for the dismantling of 18 materials.

ARN materials	Norm 2001
Batteries	13,6 kg
Oil	4,9 l
Coolant	3,6 l
Brake fluid	0,3 kg
Tyres	27,3 kg

<sup>(4)</sup> Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles, OJ L 269, 21.10.2000, p. 34.  
<sup>(5)</sup> Lower targets may be laid down for vehicles produced before 1 January 1980.  
<sup>(6)</sup> RAI on behalf of the car producers and importers, BOVAG on behalf of the garage industry, FOCWA for the car manufacturers, STIBA for the car dismantling industry and SVN (now MRF) for the shredder industry.  
<sup>(7)</sup> The SAR is managed by four directors. The industry organisations BOVAG, FOCWA, RAI and STIBA have the right to appoint one director each. The SAR is advised by an Advisory Committee, whose members are representatives of interested government bodies, environmental and/or consumer organisations. They are appointed by the board of the SAR.

<sup>(8)</sup> In 7 % of cases, the charge is paid by a private person.  
<sup>(9)</sup> Article 15(36) of the Law on Environmental Management gives the Minister for Housing, Planning and the Environment the power to declare an agreement generally binding.  
<sup>(10)</sup> Article 15(38) of the Law on Environmental Management.

ARN materials	Norm 2001
Inner tubes	0,2 kg
PUR foam	6,5 kg
Glass	25,4 kg
Rubber strips	7,7 kg
Safety belts	0,4 kg
Coconut fibre	0,9 kg
Windscreen washer fluid	0,9 kg
Bumpers	5,2 kg
Hubcaps	0,7 kg
Rear lights and indicators	1,4 kg
Grilles	0,8 kg
Fuels	5,0 kg
LPG tanks (number per wreck)	0,06

There are plans to add airbags, safety belt fasteners, air conditioning and plastic fuel tanks to the list from 2003 onwards.

- (12) In the theoretical situation that all materials are dismantled according to the 2000 norm, the total cost amounts to EUR 87,55 (NLG 192,93) per wreck, i.e. EUR 71,05 (NLG 156,58) for the costs of dismantling, EUR 13,39 (NLG 29,50) for the costs of packaging and collection and EUR 3,11 (NLG 6,85) for costs of recycling. Due to inflation, a higher recycling percentage (including new materials to be recycled) and technological developments with respect to cars, the cost is expected to increase over time. Accordingly, the expected total figure for 2003 is EUR 107,50 (NLG 236,89). For some of the materials, the recycling premium is actually negative, which means that the dismantling company receives a payment from the recycling company for the material to be recycled which is deducted from the premium received from ARN.
- (13) Currently about 267 car dismantling companies are affiliated to ARN. They dismantle about 90 % of all car wrecks in the Netherlands (286 595 in 2000). ARN pays the dismantling contributions only for the quantity of raw material that has actually been dismantled. This is on average 88,5 % of the norm quantities, corresponding to EUR 62,9 (NLG 138,57) in 2000.
- (14) ARN estimates the number of car wrecks in 2001 at between 344 000 and 372 000. ARN's market share is around 90 %. The total amount disbursed in 2000 amounted to about EUR 23,9 million (NLG 52,7 million).
- (15) The administrative cost of the system is budgeted at EUR 3,8 million (NLG 8,4 million) in 2000 and is expected to grow to EUR 4,5 million (NLG 10 million) in later years.
- (16) Any dismantling company may become ARN certified and thus eligible for the premiums, provided it meets certain objective criteria, e.g. having certain environmental licenses, being registered in the online registration system for car dismantling (ORAD), having working facilities of at least 72 m<sup>2</sup> and certain machines and tools, and using software that is in line with ARN standards. The certification procedure is carried out by an independent certifying body, Société Générale de Surveillance. In addition, ARN requires that dismantling companies be recognised by the Netherlands vehicle registration authority (RDW). It is provided by law that only companies with a legal establishment in the Netherlands can obtain such recognition, so in fact only those companies can obtain the waste disposal premiums.
- (17) A tender procedure is used for awarding contracts for collecting and transporting the dismantled materials to the recycling companies. Interested companies are invited to prove that they fulfil certain minimum technical and financial standards, such as an environmental transport licence, appropriate facilities and experience. One company per province is selected, taking into account in particular the cost price of collection, technical quality and organisational suitability. The collection of used oil is subject to a system regulated by law.
- (18) A tender procedure is also used for awarding contracts for the recycling of materials. Interested companies have to fulfil a number of minimum technical and financial requirements, in particular an environmental licence, appropriate equipment, no bankruptcy history and no criminal record. ARN selects the most attractive offers for the material in question, taking into account in particular the cost price of recycling, working methods, technical quality and organisational suitability.
- (19) Producers and importers of cars are free to pass the charge on to the buyers, or to refrain from doing so if they wish.
- (20) Part of the proceeds of the charge is used for professionalisation and pilot projects. The annual budget for professionalisation amounts to EUR 0,5 million for the period 2001-2005, while from 2006 onward it will amount to EUR 0,2 million. The annual budget for pilot projects relating to recycling is EUR 3,4 million for the period 2001-2003, and EUR 2,2 million for later years. Research topics include method analysis for dismantling, development of the appropriate tools, equipment and machinery, development of quality control systems, research into new separation technologies, optimisation of logistic systems, research into new products, market studies and development of IT-systems.

### 3. REASONS FOR THE INITIATION OF THE PROCEDURE LAID DOWN IN ARTICLE 88(2) OF THE TREATY

- (21) The Commission initiated the procedure laid down in Article 88(2) of the Treaty because it had doubts on several aspects of the system. First of all, it seemed that the dismantling contributions were likely to constitute overcompensation for the dismantling companies with potential spillover into the spare parts market. Secondly, the nature of the professionalisation and pilot projects, financed by the levy, was unclear.
- (22) Furthermore, the Commission expressed doubts as regards potential infringement of Article 29 of the Treaty (restrictions on exports), as ARN allows dismantling companies to participate in the system only if they are recognised by the Netherlands vehicle registration authority (RDW). Since it is provided by law that only companies with an establishment in the Netherlands can obtain such recognition, in practice only such companies can obtain the premiums.
- (23) The Commission did not express specific doubts as regards potential aid for car manufacturers and importers or for packaging, collecting and recycling companies. However, interested parties were given the opportunity to comment.

### 4. COMMENTS FROM INTERESTED PARTIES

- (24) Following the publication of the notice on the initiation of the procedure<sup>(1)</sup>, the Commission received nine comments from third parties. Three of the comments came from car manufacturers, three from associations of companies active in the (waste) PUR foam market, one from a consultant working for a group of Dutch waste disposal companies, one from the United Kingdom authorities and one from the central organisation in the system, ARN. A fourth association of companies active in the field of PUR foam subsequently reacted in response of the other three reactions. However, this latter comment, and also one of the car manufacturers' comments, were not sent within the period of one month following publication of the notice in the Official Journal.

#### 4.1. Comments from car manufacturers

- (25) The three comments from car manufacturers focus on quite different aspects of the ARN system. The first, Renault, welcomes the system as it places responsibility for a product at the last stage of its life on the consumer. It also thinks that the requirement for car dismantling companies to have an establishment in the Netherlands is a small concession to a Member State taking up its

responsibility for its waste streams<sup>(12)</sup>. However, Renault challenges the fact that a charge is paid regardless of the stage of life of the vehicle and regardless of its residual economic value. Car manufacturers make an effort to 'design for recycling' and they would like to see a return on these investments in differentiation of the treatment cost of their products, rather than having to pay for an average vehicle.

- (26) The second car manufacturer, Peugeot, argues that the ARN system is based on an incomplete and even contestable approach, which leads to an overestimation of the cost of treating car wrecks. Moreover, ARN did not take account of differences in efficiency, which were evident from certain European developments. The restriction to car dismantling companies having an establishment in the Netherlands was therefore not justified and was against European legislation. Finally, Peugeot regrets the total absence of transparency, as ARN refused to communicate the results of its research. As these results were unique in Europe, they should be shared, allowing further analysis.

- (27) The third car manufacturer, General Motors Europe (hereinafter GME), finds it unacceptable that ARN applied an average price, which effectively meant that car manufacturers were involuntarily subsidising inefficient players. GME maintains that the average price is based on the worst cost-base structure, and it alleges that Dutch dismantling companies use the excess amount of money they get through the ARN system to buy car wrecks in Germany. This would constitute unfair competition. If car manufacturers were involved in the process, which would seem normal since they are the payers, they would have a real system of tender offers with the cars going to the most efficient dismantling companies. This would force all the dismantling companies to make the productivity improvements that are required. GME thinks that there is a lot of room for productivity improvement. Moreover, GME believes that the system favours almost only dismantling, with no money being invested in energy recovery, which would be a good way to reach recycling quotas. Like Peugeot, GME argues that ARN is not sufficiently transparent, since it does not provide access to the results of technical studies. Neither is it clear how the recycling quotas are achieved and how the recycled materials, e.g. seat belts, are used. Finally, GME considers that the restriction of the ARN system to companies with an establishment in the Netherlands is a fairly complex issue. GME believes that the operators must be able to communicate in the home language of each country if there is to be proper monitoring.

<sup>(1)</sup> See footnote 1.

<sup>(12)</sup> Both of these remarks negate the polluter-pays principle, which forms the basis of the ARN system.

#### 4.2. Comments from associations of companies active in the (waste) PUR foam market

- (28) Three sets of comments, from the European Plastic Converters, the European Isocyanate Producers Association and the European Association of Manufacturers of Moulded Polyurethane Parts for the Automotive Industry (supported also by the European Association of Flexible Polyurethane Foam Blocks Manufacturers), draw attention to the alleged effects of the ARN system on the market for waste PUR foam. The three associations maintain that for many years the industry in the Netherlands has been recycling PUR foam scraps from industrial waste on a voluntary basis, without any subsidy and in a profitable way. However, the ARN subsidies for about 6,5 kg per vehicle have a detrimental impact on the price level of the recycled PUR. The final result is that the non-subsidised PUR foam recycling activities are squeezed out of the market. One of the associations points to the alternatives provided for by the car wrecks Directive: prevention, reuse, recycling and other forms of recovery of end-of-life vehicles and their components. Another adds that the system discriminates against other filling materials used in car seats or other car parts because there would be no similar obligations. Finally, it is argued that recycling PUR foam separately might not be the most economical solution, as the energetic value of automotive shredder residue is much higher if all types of plastics, including PUR foam, are left in it.
- (29) A later comment by the Association of Plastic Manufacturers in Europe, however, supported the view that if plastics recycling is to develop along the lines prescribed by the legislation, there needs to be a source of funding. The ARN system would represent one type of framework to provide such support for plastics recycling.

#### 4.3. Comments on behalf of the waste disposal companies

- (30) The consultant that drew up this set of comments submitted a copy of the notice of objection submitted by several waste disposal companies to the Netherlands competition authority (NMa). This notice concerns, amongst other things, the distortion of competition between participating and non-participating car dismantling companies, with respect to matters such as the commercially profitable parts contained in car wrecks. Another important issue is the concern at distortion of competition resulting from the dominant position of ARN in the markets for dismantled materials. In partic-

ular, the fact that ARN has concluded a contract with only one waste oil collecting company for the whole country is called into question. The documents state that the collecting and treatment of hazardous waste, like waste oil, oil filters and batteries, are profitable activities.

#### 4.4. Comments from the United Kingdom authorities

- (31) The United Kingdom authorities stress that in transposing the car wrecks Directive each Member State will need to take account of the different systems and industry structures that they have in place. Economic operators should not be prevented from entering into commercial negotiations about contracts on either a variable or a fixed payment basis, and they should be able to agree fixed price contracts if that is what they wish. It would be unnecessarily complex to oblige operators to enter into variable contracts.

#### 4.5. Comments from ARN

- (32) ARN submitted extensive information on the system, a new study on the cost price of car dismantling and a report on the market structure in the car dismantling sector. The Netherlands authorities fully support the ARN comments, and there is a large overlap between those comments and the reaction of the Netherlands. These two sets of comments are therefore dealt with together in the following section.

### 5. COMMENTS FROM THE NETHERLANDS AND FROM ARN

#### 5.1. General issues

- (33) The Netherlands authorities and ARN begin by reminding the Commission of its two earlier decisions on the system in which it concluded that there was no State aid. The principles of the system had not changed in the meantime. ARN doubts whether the Commission could adopt a decision that went against its two earlier decisions and asserts that the Commission should at any event have followed the procedural rules applicable to existing aid rather than the rules applicable to new aid.
- (34) ARN's comment also contains a description of the system. Among other issues, ARN stresses that the system is based on an agreement between private parties and that it is necessary to enter into a contract with as many dismantling companies as possible in order to achieve the objectives.

#### 5.2. The definition of State aid and State resources

- (35) Referring to several Court cases, in particular PreussenElektra and the opinion of Mr Advocate General Jacobs in that case<sup>(13)</sup>, ARN and the Netherlands argue that the system does not involve State aid, as the levies that are collected do not constitute State resources. State

<sup>(13)</sup> Case C-379/98, PreussenElektra AG v Schleswag AG, judgment of the Court of 13 March 2001, and opinion of Mr Advocate General Jacobs delivered on 26 October 2001 [2001] ECR I-2099.

resources would be funds over which the State exercises control in one way or another. Contrary to taxes, payments here are made on the basis of a voluntarily adopted agreement. The Minister declares such an agreement generally binding only if it has a market coverage of at least 75 %. In the case of ARN, some 93 % of the market has voluntarily adopted the agreement. The other 7 % are mainly non-professional importers. The private parties are not obliged to submit a request for a declaration that the agreement is generally binding.

- (36) Moreover, the funds are paid by private undertakings to a private legal entity, SAR, founded by private parties. At no time do the funds acquired through the charge become the property of the State. Nor does the State, at any point, exercise any form of control over how the funds are used. ARN is neither a public body nor an organisation designated or established by the State. In fact, when considering a request for an order declaring an agreement generally binding, the Minister conducts only a limited review of the agreement and the disposal system financed by the charge agreed upon. The Minister assesses whether the organisation entrusted with the task of operating the system is sufficiently independent, whether the targets for recycling set in governmental regulations can be met and whether everything has been done to involve as many parties as possible. This means that there is no State influence on the actual setting-up or operation of the system.
- (37) Finally, the collection of the charges is the responsibility of the private parties. If one of the parties refuses to abide by its obligations under the system, any other interested party will have to apply to the courts under civil law. The whole system is governed by civil law.
- (38) The Netherlands authorities and ARN also maintain that the contributions do not affect trade between Member States. There is no competition between Netherlands and foreign dismantling companies on the market for dismantling services, mainly because European legislation makes it almost impossible and in any event unattractive to export untreated car wrecks. For that reason too, there is no aid within the meaning of Article 87(1) of the Treaty.

### 5.3. Overcompensation of the car dismantling companies

- (39) The Netherlands authorities' and ARN's opinion is that the contributions to car dismantling companies constitute a reasonable payment for materials that are actually dismantled on the basis of realistically estimated dismantling costs. The activities for which these companies receive the remuneration would not be carried out

without such remuneration, because they are not economically profitable. Car dismantling companies are free to join the system or remain outside it. The system does not change anything in the competitive position of these companies. The market remains open and competitive also with respect to non-participating companies.

- (40) The contributions to car dismantling companies are based on independent research on the market and cost price. Car producers and importers, represented in the SAR, which determines the contributions, have an interest in keeping the contributions as low as possible. Where possible ARN will reduce the contributions, and as soon as ARN-activities become commercially feasible, the contribution, for these activities will be cancelled. At the same time, it is important to set the contributions at such a level that car dismantling companies are prepared and able to do the work.

#### 5.3.1. Actual payments

- (41) Contributions are paid only for materials that are actually dismantled. Theoretically, the total dismantling contribution, in the event that all materials/car parts are dismantled according to the norm quantities, would be EUR 71,05. The average contribution per car is in practice only 88,5 % of this amount, as the companies are not always able to dismantle all the materials according to the norms established by ARN. This can be due to dismantling of commercially profitable parts, or due to the fact that the car wreck is not 'complete'.
- (42) The actual amounts that are being paid are only small. Almost half of the participating car dismantling companies received contributions below EUR 100 000 over a three-year period, see the table below. For 122 companies the payments remained below EUR 100 000 over the 1998-2000 period. For 260 companies, they remained below EUR 500 000. Only in 17 cases was a higher figure reached, the maximum being below EUR 1 400 000. Even for those companies that received more than EUR 100 000 the difference between the contributions and their costs is too small to result in aid above this threshold.

Received contributions over the period 1998-2000 (EUR)	Number of car dismantling companies
0—100 000	122
100 000—200 000	80
200 000—300 000	42
300 000—400 000	17

Received contributions over the period 1998-2000 (EUR)	Number of car dismantling companies
400 000—500 000	9
500 000—600 000	5
600 000—700 000	4
700 000—800 000	2
800 000—900 000	5
900 000—1 400 000	1
Total	287

### 5.3.2. Cost prices of car dismantling companies

(43) The Commission based its decision to initiate the procedure laid down in Article 88(2) of the Treaty on the investigation by an independent expert that was carried out between April and November 1998 and finalised in May 1999. ARN notes that this report was drafted with a view of determining the lowest possible contribution rather than assessing any overcompensation. In this report, there was only one company with a cost figure of EUR 29, and the figure in this case is particularly doubtful, whereas there is a large group of smaller companies with a cost higher than EUR 71 (up to EUR 136). The report should therefore not be interpreted as meaning that the cheapest dismantling companies could dismantle the ARN materials at a cost of EUR 29. In practice this not possible for any company: 1. the report itself already indicates that it is incomplete and unreliable, as it is, for example, based on only one year, on incomplete administrative information obtained from often very small companies with limited experience in accounting matters and on estimates by these companies themselves; 2. new materials are added to the list of ARN materials and other materials have become more complicated to dismantle; 3. general cost inflation and the shortage of qualified labour in particular; 4. certain costs and cost elements were deliberately not taken into account (e.g. cost of equipment, the allocation of general costs, the cost of transporting car wrecks to the dismantling company and the cost of maintenance). In particular the larger, more efficient companies indicated that in practice they had higher costs than the report calculated.

(44) For these reasons ARN submitted an updating of the report, drafted by the same consultant. The new report focuses on companies that dismantle more than 1 000 wrecks a year. These companies accounted for 71,7 % of all car wrecks dismantled in 2000. On average these

companies dismantle 2 000 car wrecks a year. The focus on larger companies is justified by the fact that smaller companies are expected to have a higher cost price as fixed costs weigh more heavily on them.

(45) For the average company that dismantled 2 000 wrecks in 1999, a reference cost price of NLG 151 (EUR 68,5) per car wreck is calculated (excluding transport costs<sup>(14)</sup>). This figure is well above the premium that is paid out on average<sup>(15)</sup>.

(46) The report calculates the 1999 cost price, on the basis of all relevant cost items, for six companies that were also analysed in the earlier report. The range of cost prices (including transport costs) obtained varies from NLG 144 (EUR 65) to NLG 196 (EUR 89). These figures are much higher than indicated in the 1997 report and variations are only limited. For three of these companies, the report calculates a cost price lower than the reference cost price (only two if transport costs are included). In only one case does the report calculate a cost price (including transport costs) that is below the average premium paid to the relevant company. The difference amounts to NLG 5 (EUR 2,27), which means that the company's profit margin on this activity was below 5 %.

(47) As the cost figures are higher, there is no spillover effect on the commercial spare parts market. Moreover, the smaller companies in particular are active on this market. For these companies, the contributions by ARN are relatively low in comparison to their costs. The contributions would not have a significant impact on trade between Member States or on competition.

### 5.3.3. Economic appraisal of the sector and tender procedures

(48) ARN submitted yet another study from another consultant concerning an economic appraisal of the car dismantling sector and an analysis of the outcome of tender procedures if they were to be used by ARN. The main argument is that under the current system ARN concludes contracts with dismantling companies on market terms and that these companies are, therefore, not overcompensated. There is no reason to expect that the use of tender procedures to select dismantling companies would lead to better results, especially if one were to take into account the effects of using such method on ARN's ability to achieve its own and the Community's recycling targets. On the contrary, payments to dismantling companies would probably be higher if tender procedures were used. The study notes that, in normal markets too, more efficient companies can make higher profits.

<sup>(14)</sup> ARN does not take these costs into account for establishing premiums. However, if a tender procedure were used, these companies would certainly take these costs into consideration, because they are necessary in order to have a constant flow of car wrecks, which allows them to avoid idle capacity. For the six companies, transport costs vary between NLG 12 (EUR 5,4) and NLG 29 (EUR 13,2)

<sup>(15)</sup> This reference cost price is based on the assumption of optimal management and does not take into account the heaviness of the work and the increasing complexity of dismantling the more recent car wrecks. It is also based on the assumption that a large part of the costs is borne by other activities. This has become more difficult, however, as metal shredder prices have decreased significantly since 1998.

- (49) The Netherlands authorities also hold that a tender procedure for the selection of car dismantling companies would not allow the Netherlands and European objectives for car wrecks to be achieved. A large number of participating dismantling companies is desirable. A tender procedure would, by definition, lead to a limited number of selected companies. Also, ARN will never be the owner of the car wrecks and is therefore not in a position to determine which dismantling company receives the car wrecks. Furthermore, a tender procedure would not lead to lower dismantling costs. If some companies were to offer dismantling services at a lower price, these companies would not have sufficient capacity to dismantle all wrecks. It would also be likely that these companies would mainly concentrate on relatively new wrecks (resulting from accidents), which are commercially attractive for the spare parts. They probably would refuse to dismantle the older, economically unattractive car wrecks.
- (50) The Netherlands authorities do not see how specific criteria in tender procedures (such as minimum number of dismantling companies per region) would effectively solve these problems. Such an approach would lead to the selection of a large number of very different car dismantling companies with very different costs. This would be contrary to the low cost objective which was the Commissions main reason for favouring tender procedures. Moreover, ARN would perform much more of a guiding role on the market than at present.
- (51) In fact, the way of selecting and concluding contracts with car dismantling companies has the same effects as a tender procedure would have. If real tender procedures were used for establishing market prices, it is unlikely that these would be lower than the current contributions. If they were lower, there would be few dismantling companies willing to dismantle car wrecks for this lower amount.
- (52) From the above, the Netherlands authorities and ARN conclude that there is no overcompensation of car dismantling companies.
- (54) None of these activities would involve State aid. They are all performed for the benefit of the companies paying the disposal fee. Assignments to third parties are always given on market conditions. In most cases the amounts of payments are so low that any aid would in any event be below the *de minimis* threshold.
- (55) The last category, pilot projects, concerns the 'recyclability' of materials. The resources are not used for the development of new technology, but existing separation technologies, e.g. from the mining industry or the recycling of other materials, are investigated with a view to potential application to car materials. The application of these technologies is necessary to reach the objectives set in the car wrecks Directive. ARN does not always bear the full cost of these projects itself.
- (56) Normally the results are publicly available. The only reason for ARN not to publish information is when it contains details that may harm ARN's or the other companies' competitive interests.

#### 5.5. The obligations resulting from the car wrecks Directive

- (57) The Netherlands authorities maintain that until they implement the car wrecks Directive there is no legal obligation for producers or importers to bear (financial) responsibility for the collection and processing of car wrecks. By their agreement on the waste disposal levy, they voluntarily take an additional financial responsibility. Once the Directive is implemented, it can be maintained that the collection and processing of car wrecks constitutes a cost that is normally included in the budget of these companies. The agreement, however, does not lead to an exemption of this cost, but constitutes the elaboration of the underlying principle.

#### 5.6. Participation of foreign car dismantling companies

#### 5.4. ARN's research and development activities

- (53) ARN's budget for research and development covers 1. ARN's internal costs, 2. feasibility studies carried out by universities or research institutes on recycling of new materials or on new recycling methods, 3. research studies on the efficiency of the ARN system, 4. pilot projects carried out by companies that recycle/process dismantled materials. ARN provided a detailed breakdown of these expenditures for the period 1998-2001 (first quarter).
- (58) The Netherlands authorities and ARN do not perceive any infringement of Article 29 of the Treaty. Firstly, Article 29 does not target measures taken by private parties. The requirement of being recognised by ORAD (recognition to be provided by the RDW) is not the consequence of any government measure. It is imposed by ARN, which is not a public body. Secondly, all car dismantling companies can set up an establishment in the Netherlands in order to obtain ORAD recognition. Thirdly, measures that do not make a distinction on the basis of nationality do not fall under the application of Article 29. The requirement of being recognised by



ORAD is applicable without distinction to companies of domestic and foreign origin and to cars irrespective of where they have been produced. Fourthly, the exportation of car wrecks to car dismantling companies abroad is not impossible and is not restricted by the ORAD recognition system. Fifthly, the free movement of goods, as regards the imports and exports of car wrecks, has been harmonised by 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 EC <sup>(16)</sup>.

(59) Alternatively, the Dutch authorities hold the opinion that there is an objective justification for ARN to require ORAD recognition. The link with the registration system is the only way of ensuring that the contributions are paid only for cars produced in or imported into the Netherlands.

(60) The Dutch authorities distinguish between the situation before and after the implementation of the car wrecks Directive. As concerns the situation before the implementation of the car wrecks Directive: RDW does not provide ORAD recognition to companies without an establishment because it cannot then control or monitor these companies. The same policy is followed in the context of the annual car tests (APK). The Netherlands authorities do not see any reason why the judgment in *Van Schaik* <sup>(17)</sup> would not be applicable. If RDW were to provide ORAD recognition to companies abroad, ARN would in theory allow these companies to participate in the system.

(61) As concerns the situation after the implementation of the car wrecks Directive: on the basis of Article 5(5), Member States have to mutually recognise and accept certificates of destruction issued by competent authorities in other Member States. Once this has been achieved, RDW will accept such certificates and deregister the car wreck concerned itself. This is different from giving foreign companies the power to deregister cars on-line themselves. Moreover, the fifth sentence of Article 5(3) specifies that issuing the certificate of destruction does not entitle the company to claim any financial reimbursement.

(62) Car dismantling is basically a locally operated activity. For several reasons that are not related to the ARN system, export of car wrecks is limited and the Netherlands authorities do not see any reason to expect this to be different in the future. Firstly, car wrecks containing liquids can only be exported in conformity with the 'red list procedure' of Regulation (EEC) No 259/93. Part of this procedure is the request of permission of both the

exporting and the importing country, the payment of a deposit and enabling third parties to object against the intended export. This makes such exportation a time-consuming, expensive and risky activity. Secondly, car wrecks without liquids can be exported in conformity with the 'green list procedure' of Regulation (EEC) No 259/93. The removal of the liquids before exportation, however, makes it financially and organisationally unattractive to export Netherlands car wrecks to car dismantling companies abroad.

(63) If a number of car dismantling companies abroad were to participate in the ARN system, it might become necessary to introduce separate collection and recycling measures for the materials dismantled by these companies. This might again lead to problems in the context of Regulation (EEC) No 259/93. Many of the ARN materials are not on the green list. Therefore, participation by foreign car dismantling companies would make the system more expensive.

#### 5.7. Potential aid for packaging, collection and recycling companies

(64) The Netherlands authorities and ARN consider the contracts between ARN and the packaging, collecting and recycling companies to be normal contracts and do not see any reason to doubt that they are transparent and non-discriminating. Guarantees of a minimum supply of materials to recycling companies would never constitute a monetary transfer and are always provided under normal market conditions.

#### 5.8. Comments on third party comments

(65) The Netherlands authorities note that the third parties, except ARN, have provided hardly any evidence in support of the various remarks. They also note that various comments supported the system and that on various points the parties contradict one another.

(66) The Netherlands authorities stress that no resources are used for the recycling of PUR foam and that the contribution concerns only the dismantling of the foam from the car wrecks. This contribution takes into account the proceeds that dismantling companies obtain for the material. Furthermore, a distortion of competition is unlikely. The ARN system leads to the dismantling of about 1 700 tonnes of PUR foam a year. This compares with a total annual production of 2 million tonnes of new PUR foam. Production waste amounts to about 120 000 tonnes, 70 000 tonnes of this is being exported, mainly to the United States. The quality of

<sup>(16)</sup> OJ L 30, 6.2.1993, p. 1.

<sup>(17)</sup> Case C-55/93 *Van Schaik* [1994] ECR I-4837.

foam from car wrecks is much lower than the foam from production waste and an extensive quality report is required. The Netherlands authorities believe that the lower proceeds from PUR foam other than the foam from car wrecks is probably due to other factors, notably the poor market situation in the United States with increasing supply of production waste foam and diminishing demand for its main use (underlay carpet). Already between 1993 and 1995, before ARN started the recycling of PUR foam, the price of production waste foam exported to the United States fell from DM 1,6 to DM 0,8 per kg. Finally, the Netherlands authorities note that other ways of using waste PUR foam may be in cement ovens or gasification installations and that PUR foam may be obtained from shredder waste. However, the car wrecks Directive explicitly expresses a preference for material reuse over recovery.

(67) With respect to the comments by car manufacturers, the Netherlands authorities are in principle in favour of having differentiated premiums. ARN has investigated this, but concluded that it was not possible. With respect to the cost level, it is doubtful whether the car manufacturers take account of the ambitious objectives and the high quality requirements when they state that ARN's calculation of recycling and dismantling costs is too high. It seems very unlikely that 'excess amounts' would enable car dismantling companies to buy car wrecks in Germany. In any case, no contributions are paid for dismantling non-Netherlands cars.

(68) With respect to the comments submitted on behalf of waste disposal companies, the Netherlands authorities hold that these comments should not be accepted as the consultant has not proven to have any interest in the case. They mention as well that the Netherlands competition authority (NMa) has not revised its positive decision following receipt of the documents submitted. According to the Netherlands authorities the background of the comments must be that since 1999 new regulations have introduced competition into the oil collecting sector, which has enabled ARN to conclude a

contract with a company on significantly more advantageous terms than before.

## 6. ASSESSMENT

### 6.1. State resources and on effects on trade

- (69) In *PreussenElektra* <sup>(18)</sup>, the Court of Justice ruled that an obligation imposed on private electricity supply undertakings to purchase electricity produced from renewable energy sources at fixed minimum prices does not involve any direct or indirect transfer of State resources to undertakings which produce that type of electricity. However, the ARN system differs from such a system. There is an intermediary organisation responsible for the management of the resources and a fund to which the charges are paid. The proceeds of the charge are to be used only for the collection and recycling of the materials; distribution of profits to the participating companies is prohibited. Because of these characteristics, the charge is comparable to a parafiscal charge. On various occasions the Court of Justice has ruled that the use of parafiscal charges in favour of certain undertakings constituted State aid <sup>(19)</sup>.
- (70) However, in the present case manufacturers and importers may obtain exemption if they ensure disposal of the car wrecks in at least an equivalent way to disposal under the system that is financed from the proceeds of the charge (see recital 10). Manufacturers and importers are free to process car wrecks through their own resources, to set up their own systems or to affiliate themselves to other systems. These options are real, at any rate for car manufacturers and large importers. The Commission therefore regards the Netherlands authorities' decision to declare the charge generally binding as imposing an obligation to produce results rather than as an obligation to contribute to the ARN system. The Commission considers that the charge is voluntary or at least optional in character, and the proceeds of the charge do not therefore constitute state resources.
- (71) The absence of State resources means that there is no State aid within the meaning of Article 87(1) of the Treaty. However, in the following paragraphs, it is made clear that, even if the proceeds of the charge did constitute State resources, the Commission would conclude that the system does not involve State aid, since it does not favour certain undertakings or the production of certain goods.

<sup>(18)</sup> See footnote 13, paragraphs 59 to 61 of the Judgment.

<sup>(19)</sup> For example, in Case 78/76 *Steinike & Weinlig v Germany* [1977] ECR 595. In that Judgment, the Court held:

'(21) The prohibition contained in Article 92(1) covers all aid granted by a Member State or through State resources without it being necessary to make a distinction whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid. In applying Article 92 regard must primarily be had to the effects of the aid on the undertakings or producers favoured and not the status of the institutions entrusted with the distribution and administration of the aid.'

(22) A measure adopted by the public authority and favouring certain undertakings or products does not lose the character of a gratuitous advantage by the fact that it is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned.'

(72) As far as the effect on trade between Member States is concerned, the Commission cannot accept the Netherlands authorities' and ARN's arguments. Trade in car wrecks may be very limited, but it exists. Moreover, a substantial number of companies that participate in the system are also active in the spare parts market. Spare parts are internationally traded, and indeed increasingly so. Therefore, any aid for dismantling activities must be expected to affect trade between Member States. Furthermore, the existence of the system possibly has an effect on trade in cars.

## 6.2. Car manufacturers and importers

(73) Article 5(4) of the car wrecks Directive stipulates that Member States shall take the necessary measures to ensure that producers and professional importers meet all, or a significant part of, the costs of the implementation of this measure [...] <sup>(20)</sup>. This is in line with the principle of producer responsibility and the 'polluter pays' principle. In fact, the Netherlands system is based on these principles. However, in the Netherlands system the cost of dismantling and recycling car wrecks is financed from the proceeds of a charge that is declared generally binding by the Government. Viewed in isolation, this favours car manufacturers and importers. However, the Commission can make allowance for the contribution arrangements under which it is primarily the car manufacturers and importers themselves who finance the recycling system. They are thus not relieved of a normal company cost. In the area of recycling, the charge has a very specific and unique purpose, there being a direct and compelling link between the charge and the payment, both of which relate to precisely the same good, at different moments of its economic lifetime. In these circumstances, the effect of the arrangements is merely to oblige undertakings selling cars to internalise all of the true environmental costs associated with their activities, without any other financial intervention from the Member State being necessary.

(74) One car manufacturer commented that it would like to see a return on its investments in 'design for recycling' in the form of differentiation of the treatment cost of its products. However, it cannot be deduced from this that the system contains an aid element for those car manu-

facturers that do not invest similar amounts in 'design for recycling'. In the notification, ARN explained that it did not choose to determine different levies for different types of cars as the calculations would be difficult and based on poor information. Moreover, the consequences of 'design for recycling' will have an impact on the car wrecks system only after some years.

(75) The Commission therefore expects that via the system each car manufacturer or importer will pay at least a significant part of the costs referred to in Article 5(4) of the car wrecks Directive and concludes that there is no State aid for car manufacturers and importers, even if State resources were involved.

## 6.3. Undertakings involved in packaging, collecting and recycling

(76) Following the initiation of the Article 88(2) procedure, no comments were received concerning the openness of the tender procedures used by ARN. The Commission therefore assumes that these procedures ensure that the remuneration is reduced to the necessary minimum. The Netherlands authorities do not intervene in any way to inflate the payments or overcompensate the undertakings concerned. The terms of the tenders seem transparent and non-discriminatory, the conditions imposed seem objectively justifiable and do not seem to give rise to any de facto discrimination.

(77) Even if the public tenders are sufficiently transparent and non-discriminatory, they are insufficient, in themselves, to allow the conclusion to be drawn that no State aid is involved, because the premiums are effectively filling the gap between the cost of dismantling and the price to be obtained for the recycled materials in the market. However, it is the responsibility of the car manufacturers and importers, in accordance with the 'polluter pays' principle, as agreed among themselves and as confirmed by the order declaring the agreement generally binding and by the car wrecks Directive, to ensure that the activities for which the remuneration is paid are carried out. Therefore, the effect of the arrangements is that the undertakings involved in packaging, collecting and recycling are effectively performing a service primarily for the car manufacturers and importers, as opposed to the

<sup>(20)</sup> 'This measure' refers to the first subparagraph of Article 5(4) concerning the delivery of the vehicle to an authorised treatment facility without any cost for the last holder and/or owner as a result of the vehicle's having no or a negative market failure. This implies that any commercial deficit resulting from dismantling and recycling cannot be passed on to the last owner or holder of the car. The second subparagraph of Article 5(4) relates to the costs of these commercial deficits.

Member State or consumers. The Commission therefore concludes that there is no State aid for these undertakings, even if the proceeds of the charge were deemed to be State resources.

- (78) The comments by the three associations involved in PUR foam recycling point to the effects of the contribution for dismantling PUR (EUR 2,86 per kg). The facts presented by the Netherlands authorities indicate, however, that the effect of the relatively small additional supply of inferior waste PUR foam must be limited. Moreover, any such general effect of the system remains a typical result of regulations requiring all environmental costs related to selling cars to be internalised by the car industry as a whole.

#### 6.4. Dismantling companies

- (79) The Commission has assessed the new report submitted by ARN presenting new calculations on the cost of car dismantling companies and agrees with the general picture. It is shown in particular that: 1. the actual cost prices of dismantling car wrecks are significantly higher than indicated in the 1999 report; 2. the 'reference cost price' of dismantling an average car wreck is well above the average contribution that is paid out; and 3. cost differences are much smaller than was concluded in the 1999 report. Only in one case is the cost price below the average contribution paid to the relevant company, but the gap is relatively small. Furthermore, the Commission makes allowance for the need to have a sufficient number of participating dismantling companies. Finally, ARN and the Netherlands authorities have shown that the differences among car wrecks and among dismantling companies present difficulties for tendering procedures. The Commission does not rule it out that it may still be possible to apply such procedures, but agrees that it is unlikely that they would result in lower dismantling contributions, even in the case of the more efficient dismantling companies. Under these circumstances, the Commission can regard the dismantling contributions as reflecting market prices for the services of the car dismantling companies. Consequently, there is no overcompensation to these companies.

- (80) The absence of overcompensation, viewed in isolation, is not sufficient to allow the conclusion to be drawn that no State aid is involved, because the premiums are effectively filling the gap between the cost of dismantling and the price to be obtained for the recycled materials in the market. As described in recital 77, however, it is the responsibility of the car manufacturers and importers, in accordance with the 'polluter pays' principle, as agreed among themselves and as confirmed by the order declaring the agreement generally binding and by the car wrecks Directive, to ensure that the activities for which

the remuneration is paid are carried out. Therefore, the effect of the arrangements is that the dismantling companies are effectively performing a service primarily for the car manufacturers and importers, as opposed to the Member States or consumers. The Commission therefore concludes that there is no State aid for these undertakings, even if the proceeds of the charge were deemed to be State resources.

- (81) Any waste disposal system for car wrecks necessarily involves choices for one or another technology with a view to reusing, recovering or recycle a specific material. ARN's and the Netherlands authorities objectives, favouring selective dismantling over combined shredder/separation technologies, may involve a relatively large workload for dismantling companies. This fact, however, does not alter the nature of the contributions, which are a market reward for services rendered and which, for the reasons stated above, do not constitute State aid.

#### 6.5. The expenses for professionalisation and pilot projects relating to recycling

- (82) Research studies on the efficiency of the ARN system and on the efficiency of dismantling are primarily of importance for ARN and the functioning of the system. They do not directly benefit dismantling or recycling companies or car manufacturers. Therefore, the Commission agrees with the Netherlands authorities that, even if the budgetary resources were deemed to be State resources, these studies do not constitute State aid, as they do not favour specific companies or specific activities within the meaning of Article 87(1) of the Treaty. The same conclusion also holds for ARN's internal costs under this budget line in as far as they relate to activities that are also connected with the efficiency of the system.
- (83) From their description it becomes clear that the feasibility studies and pilot projects on dismantling and recycling of new materials/car parts also primarily serve the interests of the system and do not confer specific benefits on the participants in the system or on the companies carrying out the research. No new technologies are being tested; the work solely concerns investigation of potential application of existing technologies for specific materials/car parts. The dissemination of results is restricted only when the interests of ARN or of third parties that participate in the research so require. ARN awards research contracts to firms according to market conditions, with specific advantages for the participating firms being ruled out. Therefore, these expenses do not constitute State aid within the meaning of Article 87(1) of the Treaty, even if the budgetary resources were deemed to be State resources.

#### 6.6. Infringements of other Treaty provisions

- (84) As the Commission takes the view that the system does not result in State aid, it is not entitled to decide, under the Article 88(2) procedure, whether other provisions of Community law are infringed.

#### 7. CONCLUSIONS

- (85) The Commission concludes that the waste disposal system for car wrecks does not involve State aid. No State resources are involved, since the obligation imposed under the Law on Environmental Management and the declaration that the system is generally binding must be regarded as an obligation to produce results. The decision to pay the charge is voluntary, or at least optional. Furthermore, the measure does not constitute State aid even if the proceeds of the charge were deemed to be State resources, since it does not favour specific companies. Car manufacturers actually pay at least a significant part of the cost of the system, while the contributions for car dismantling companies must be viewed as a market remuneration for the services they provide, despite some divergence observed in cost prices. There is no evidence that the management of the system by ARN has provided specific advantages for other participants in the system. Finally, the Commission has found that the budget for professionalisation and pilot projects is used entirely in the interests of the system,

without conferring specific advantages on the companies involved in the research. As the Commission concludes that the system does not involve State aid, it is not entitled, within the framework of the Article 88(2) procedure, to decide on possible infringements of other Treaty provisions,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The waste disposal system for car wrecks declared generally binding by the Netherlands authorities, as notified to the Commission, does not constitute aid within the meaning of Article 87(1) of the Treaty.

#### *Article 2*

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 30 October 2001.

*For the Commission*

Mario MONTI

*Member of the Commission*