COMMISSION DIRECTIVE

of 28 September 1978

adapting to technical progress the Annexes to Council Directives 75/106/EEC and 76/211/EEC on prepackaging

(78/891/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 71/316/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to common provisions for both measuring instruments and methods of metrological control (1), as amended by the Act of Accession (2), and in particular Articles 17, 18 and 19 thereof,

Having regard to Council Directive 75/106/EEC of 19 December 1974 on the approximation of the laws of Member States relating to the making-up by volume of certain prepackaged liquids (3),

Having regard to Council Directive 76/211/EEC of 20 January 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain prepackaged products (4),

Whereas the implementation of the provisions of Directive 76/211/EEC has shown the need for a revision of the tolerable negative errors and the classification of products;

Whereas a simpler classification of prepackaged products is bound to facilitate their preparation for sale and offer the consumer a wider choice of prepackaged products;

Whereas the markings on small prepackages can in certain cases be less than the height specified in Directives 75/106/EEC and 76/211/EEC and yet still be sufficiently visible and legible;

Whereas modern statistical control methods make it possible to reduce the extent of the sampling plans specified in these two Directives;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on the Adaptation to Technical Progress of Directives Designed to Eliminate Technical Barriers to Trade in the Measuring Instruments Sector,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Sections 3.1, 4 and 5 of Annex I to Directive 75/106/EEC are replaced by the corresponding sections in Annex I to this Directive.

Article 2

Sections 2.4, 3.1 and 5 of Annex I to Directive 76/211/EEC are replaced by the corresponding sections in Annex II to this Directive.

Sections 2.5 and 2.6 are deleted.

Article 3

Annexes II to Council Directives 75/106/EEC and 76/211/EEC are replaced, up to and including Sections 2.2, by the text set out in Annex III to this Directive.

Article 4

1. The Member States shall adopt the laws, regulations and administrative provisions needed in order to comply with this Directive in such a way that these take effect on 1 January 1980.

They shall forthwith inform the Commission thereof.

2. Member States shall ensure that the text of the provisions of internal law which they adopt in the field covered by this Directive is communicated to the Commission.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 28 September 1978.

For the Commission

Étienne DAVIGNON

Member of the Commission

(1) OJ No L 202, 6. 9. 1971, p. 1.
(2) OJ No L 73, 27. 3. 1972, p. 14.
(3) OJ No L 42, 15. 2. 1975, p. 1.
(4) OJ No L 46, 21. 2. 1976, p. 1.

ANNEX I

AMENDMENTS TO ANNEX I TO COUNCIL DIRECTIVE 75/106/EEC

3.1. the nominal volume of the contents expressed in litres, centilitres or millilitres and marked in figures at least 6 mm high if the nominal volume of the contents is greater than 100 cl, 4 mm high if it is from 100 cl down to but not including 20 cl, 3 mm high if it is from 20 cl down to but not including 5 cl, 2 mm high if it is not more than 5 cl, followed by the symbol for the unit of measurement used or where appropriate by the name of the unit, in accordance with Directive 71/354/EEC, as last amended by Directive 76/770/EEC;

until the expiry of the transitional period, during which the use of the imperial units of measurement appearing in Annex II to Council Directive 71/354/EEC is authorized in the Community, the indication of the nominal volume of the contents expressed in SI units in accordance with the preceding paragraph may be accompanied by that of the equivalent value in imperial (UK) units of measurement, calculated on the basis of the following conversion factors:

one millilitre = 0·0352 fluid ounce
one litre = 1·760 pints or 0·220 gallon.

Member States may, where they think it necessary, insist on this second indication for products put up for sale on their national territories. Markings in imperial (UK) units shall be in letters and figures of dimensions not larger than those of the corresponding markings in SI units.

4. RESPONSIBILITY OF THE PACKER OR IMPORTER

The packer or importer shall be responsible for ensuring that prepackages meet the requirements of this Directive.

The quantity of liquid contained in a prepackage, known as the actual volume of the contents, shall be measured or checked on the responsibility of the packer or the importer. The measurement or check shall be carried out by means of a legal measuring instrument suitable for effecting the necessary operations.

The check may be carried out by sampling.

Where the actual volume of the contents is not measured, the check carried out by the packer shall be so organized that the nominal volume of the said contents is effectively ensured, in conformity with the provisions of this Directive.

In order to fulfil this requirement, the packer must carry out production checks in accordance with procedures recognized by the competent departments in the Member State and if he holds at the disposal of these authorities the documents containing the results of such checks, in order to certify that these checks, together with the corrections and adjustments which they have shown to be necessary, have been properly and accurately carried out.

Where goods are imported from non-EEC countries, the importer may, instead of measuring and checking, provide evidence that he is in possession of all the necessary guarantees enabling him to assume responsibility.

One of the several methods of meeting the measuring and checking requirement is to use when making up the prepackage a measuring container of the type defined in the Directive relating thereto and filled under the conditions prescribed in this Directive and in that on measuring container bottles.

5. CHECKS TO BE CARRIED OUT BY THE COMPETENT DEPARTMENTS ON THE PREMISES OF THE PACKER OR OF THE IMPORTER OR OF HIS AGENT ESTABLISHED IN THE COMMUNITY

Checks to ensure that the prepackages comply with the provisions of this Directive shall be carried out by the competent departments of the Member States by sampling on the packer's premises or, if this is not practicable, on the premises of the importer or of his agent established in the Community.

This statistical sampling check shall be carried out in accordance with the accepted methods of quality acceptance inspection. Its effectiveness shall be comparable to that of the reference method specified in Annex II.

Thus as regards the criterion for the minimum acceptable contents, a sampling plan used by a Member State shall be regarded as comparable with that recommended in Annex II if the abscissa of the 0·10 ordinate point of the operating characteristic curve of the first plan (probability of acceptance of the batch = 0·10) deviates by less than 15 % from the abscissa of the corresponding point of the operating characteristic curve of the sampling plan recommended in Annex II.

As regards the criterion for the mean calculated by the standard deviation method, a sampling plan used by a Member State shall be regarded as comparable with that recommended in Annex II if, taking into account the operating characteristic curves of the two plans having as the abscissa axis $\frac{V_n - m^{(1)}}{s}$, the abscissa of the 0·10 ordinate point of the curve of the first plan (acceptance probability of the batch = 0·10) deviates by less than 0·05 from the abscissa of the corresponding point of the curve of the sampling plan recommended in Annex II.

(1) m = actual batch mean.

ANNEX II

AMENDMENTS TO ANNEX I TO DIRECTIVE 76/211/EEC

2.4. The tolerable negative error in the contents of a prepackage is fixed in accordance with the table below:

Nominal quantity Qn in grams or millilitres	Tolerable negative error	
	as % of Qn	g or ml
5 to 50	9	—
from 50 to 100	—	4·5
from 100 to 200	4·5	—
from 200 to 300	—	9
from 300 to 500	3	—
from 500 to 1 000	—	15
from 1 000 to 10 000	1·5	—

When using the table, the values of the tolerable negative errors shown as percentages in the table, calculated in units of weight or volume, shall be rounded up to the nearest one-tenth of a gram or millilitre.

3.1. The nominal quantity (nominal weight or nominal volume) expressed in kilograms, grams, litres, centilitres or millilitres, and marked in figures at least 6 mm high if the nominal quantity exceeds 1 000 g or 100 cl, 4 mm high if it is from 1 000 g or 100 cl inclusive down to but not including 200 g or 20 cl, 3 mm high if it is from 200 g or 20 cl down to but not including 50 g or 5 cl, 2 mm high if it is not more than 50 g or 5 cl, followed by the symbol for the unit of measurement used or where appropriate by the name of the unit in accordance with Directive 71/354/EEC, as last amended by Directive 76/770/EEC.

Markings in imperial (UK) units shall be in letters and figures of dimensions not larger than those of the corresponding markings in SI units.

5. CHECKS TO BE CARRIED OUT BY THE COMPETENT DEPARTMENTS ON THE PREMISES OF THE PACKER OR OF THE IMPORTER OR OF HIS AGENT ESTABLISHED IN THE COMMUNITY

Checks to ensure that the prepackages comply with the provisions of this Directive shall be carried out by the competent departments of the Member States by sampling on the packer's premises or, if this is not practicable, on the premises of the importer or of his agent established in the Community.

This statistical sampling check shall be carried out in accordance with the accepted methods of quality acceptance inspection. Its effectiveness shall be comparable to that of the reference method specified in Annex II.

Thus as regards the criterion for the minimum contents, a sampling plan used by a Member State shall be regarded as comparable with that recommended in Annex II if the abscissa of the 0·10 ordinate point of the operating caracteristic curve of the first plan (probability of acceptance of the batch = 0·10) deviates by less than 15 % from the abscissa of the corresponding point of the operating characteristic curve of the sampling plan recommended in Annex II.