Council Directive 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 (76/211/EEC)

COUNCIL DIRECTIVE

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

(76/211/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the Economic and Social Committee[(2)],

Whereas in most of the Member States the conditions of presentation for sale of products in prepackages are the subject of mandatory regulations which differ from one Member State to another, thereby hindering trade in such prepackages; whereas such provisions must therefore be approximated;

Whereas, in order to enable consumers to be correctly informed, the method of marking on the prepackage the nominal weight or volume of the product contained in the prepackage, should be presented;

Whereas it is also necessary to specify the tolerable negative errors in the contents of prepackages and whereas a reference method for such control should be defined in order to provide a simple method of ensuring that prepackages conform to the provisions laid down;

Whereas Article 16 of 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[(3)], as last amended by the Act of Accession[(4)], provides that the harmonization of the requirements for marketing certain products, in particular as regards the measurement and marking of prepacked quantities, may be covered by separate Directives;

Whereas since too quick a change in the means of determining quantity laid down by their national legislation and the organization of new systems of control as well as the adoption of a new measurement system would present difficulties for certain Member States, a transitional period should be provided for these Member States; whereas such provision should not, however, further inhibit intra-Community trade in the products concerned and should not prejudice implementation of the Directive in the other Member States,

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HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive relates to prepackages containing products**[**[F1] with the exception of those referred to in the Council Directive 75/106/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to the making-up by volume of certain prepackaged liquids, and**]** intended for sale in constant unit nominal quantities which are:

— equal to values predetermined by the packer,

— expressed in units of weight or volume,

— not less than 5 g or 5 ml and not more than 10 kg or 10 l.

Textual Amendments

F1 Deleted by Directive 2007/45/EC Of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC.

Article 2

1 A prepackage within the meaning of this Directive is the combination of a product and the individual package in which it is prepacked.

2 A product is prepacked when it is placed in a package of whatever nature without the purchaser being present and the quantity of product contained in the package has a predetermined value and cannot be altered without the package either being opened or undergoing a perceptible modification.

Article 3

1 The prepackages which may bear the EEC sign specified in section 3.3 of Annex I are those which comply with this Directive and with Annex I thereto.

2 They shall be subject to metrological control under the conditions defined in Annex I, section 5 and in Annex II.

Article 4

1 All prepackages referred to in Article 3 must, in accordance with Annex I, bear an indication of the weight or volume of the product, known as ‘nominal weight’ or ‘nominal volume’, which they are required to contain.

2 Prepackages containing liquid products shall be marked with their nominal volume and prepackages containing other products shall be marked with their nominal weight, except in the case of trade practice or national regulations which provide otherwise and which are identical in all Member States, or in the case of contrary Community rules.

3 If trade practice or national regulations are not the same in all Member States for a category of products or for a type of prepackage, those prepackages must at least show the metrological information corresponding to the trade practice or national regulations prevailing in the country of destination.

4 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 of 18 October 1971 on the approximation of the laws of the Member States relating to units of measurement[(5)], as amended

by the Act of Accession, is authorized in the Community, the indication of the nominal weight and/or nominal volume of the contents expressed in SI units of measurement in accordance with section 3.1 of Annex I to this Directive shall, if the United Kingdom or Ireland so desires, be accompanied on their national territories by an indication of the equivalent value in imperial units of measurement (UK), calculated on the basis of the following conversion factors:

1 g	=	0.0353 ounces (avoirdupois),
1 kg	=	2.205 pounds
1 ml	=	0.0352 fluid ounces,
1 l	=	1.760 pints or 0.220 gallons.

Article 5

Member States may not refuse, prohibit or restrict the placing on the market of prepackages which satisfy the requirements and tests laid down in this Directive for reasons concerning the markings required to be borne by such prepackages pursuant to this Directive, the determination of their volume or weight, or the methods by which they have been measured or checked.

[*F2**Article 6*

The Commission is empowered to adopt delegated acts in accordance with Article 6a amending Annexes I and II to adapt them to technical progress.**]**

Textual Amendments

F2 Substituted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).

[*F3**Article 6a*

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The power to adopt delegated acts referred to in Article 6 shall be conferred on the Commission for a period of five years from 26 July 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3 The delegation of power referred to in Article 6 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(6)].

5 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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6 A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.**]**

Textual Amendments

F3 Inserted by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (Text with EEA relevance).

Article 7

1 Member States shall bring into force the laws, regulations and administrative provisions needed in order to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

2 By way of derogation from paragraph 1, Belgium, Ireland, the Netherlands and the United Kingdom may defer implementation of this Directive and the Annexes thereto until 31 December 1979 at the latest.

3 During the period in which the Directive is not operative in a Member State, that Member State shall not introduce stricter control measures regarding the quantity contained in prepackages covered by this Directive and coming from other Member States than those in force when the Directive was adopted.

4 During the same period, the Member States which have implemented the Directive shall accept those prepackages coming from Member States benefiting from the derogation provided for in paragraph 2 of this Article which comply with section 1 of Annex I, even if they do not bear the EEC sign referred to in section 3.3 of Annex I, on the same basis and under the same conditions as those prepackages which comply with all the requirements of the Directive.

5 The checks provided for by Annex I, section 5 shall be carried out by the competent authorities of the Member State of destination when prepackages manufactured outside the Community are imported into the territory of the Community in a Member State which has not yet implemented the Directive in accordance with this Article.

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

Article 8

This Directive is addressed to the Member States.

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ANNEX I

1. OBJECTIVES

Prepackages covered by this Directive shall be made up in such a way that the completed packages satisfy the following requirements:

1.1. the actual contents shall not be less, on average, than the nominal quantity;

1.2. the proportion of prepackages having a negative error greater than the tolerable negative error laid down in 2.4 shall be sufficiently small for batches of prepackages to satisfy the requirements of the tests specified in Annex II;

1.3. no prepackage having a negative error greater than twice the tolerable negative error given in the table in 2.4 may bear the EEC sign provided for in 3.3.

2. DEFINITIONS AND BASIC PROVISIONS

2.1. The nominal quantity (nominal weight or nominal volume) of the contents of a prepackage is the weight or volume indicated on the prepackage, i.e. the quantity of product which the prepackage is deemed to contain.

2.2. The actual contents of the prepackage are the quantity (weight or volume) of product which it in fact contains. In all operations for checking quantities of products expressed in units of volume, the value employed for the actual contents shall be measured at or corrected to a temperature of 20 °C, whatever the temperature at which packaging or checking is carried out. However, this rule shall not apply to deep frozen or frozen products, the quantity of which is expressed in units of volume.

2.3. The negative error of a prepackage is the quantity by which the actual contents of the prepackage are less than the nominal quantity.

2.4. **[**[F4]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.**]**

2.5. **[**[F5]. . . . .