



Informative document

Overview of the Food Information Regulation impact on Prepackages

WELMEC

European Cooperation in Legal Metrology

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Background

1. Directives 76/211/EEC and 2007/45/EC are mandatory for Member States to implement. Directive 76/211/EEC (hereafter referred to as the Directive) introduces the 'e'-mark - a mark which is a declaration by the packer or importer that the prepackages in the batch comply with the labelling and quantity requirements of the Directive. Directive 2007/45/EC requires certain wines and spirit drinks to be prepacked in specified quantities. The Directive still applies for all foods and the 'nominal quantity', required by the Directive, is mentioned in the Food Information Regulation (EU) 2011/1169¹ (hereafter referred to as the Regulation).
2. The Directive controls e-marked prepackages (pre-packed products made up to the same nominal quantity) in the range 5 g or ml to 10 kg or L regardless of product, and so it controls both foods and non-foods. Meeting the requirements of the Directive permits free circulation of e-marked prepackages in the Member States².
3. It is legitimate for prepackages to be labelled without an e-mark, in which case it needs to meet the requirements specified in the national law where produced or of the Member State they are exported to.
4. The Directive requires prepackages to be marked with a 'nominal quantity' and information about the packer/importer or for whom packed. Article 4 in the Directive specifies the permitted units of measurements to be used for the nominal quantity.
5. The Regulation is mandatory for Member States and the requirements must be met by packers and importers. The Regulation requires certain mandatory information³ to be provided to the consumer when taking delivery of any 'food'⁴, this includes an indication of 'net quantity'.
6. The Regulation also recognise⁵ the "... more specific Union provisions regarding weights and measures" contained in the Directive.

¹ Regulation (EU) 2011/1169, Annex IX, paragraph 2. The Directives are not revoked by Article 53.

² Member States consist European Economic Area, Switzerland and Turkey.

³ Regulation (EU) 1169/2011, Article 9.1.

⁴ As defined in Regulation (EC) 178/2002, article 2.

⁵ Regulation (EU) 1169/2011, Article 11.

Issues

1. Packaging is not part of the weight of food

The Regulation specifies⁶ that the 'nominal quantity' required by the Directive shall be regarded as the 'net quantity' required by the Regulation. The Regulation define 'prepacked foods' as⁷ "... consisting of a food and the packaging into which it was put before being offered for sale ...". Food is defined as⁸ "... any substance or product ... intended to be, or reasonably expected to be ingested by humans". That means that the nominal quantity, which is the net quantity, is only the quantity of food. Therefore all packaging is considered not to be food.

IMPACT: This clarifies that immediate wrappers are not part of the food, and so the weight of immediate wrappers must not be included in the net quantity declaration. This view is supported by the European Commission in their report 'Metrological Requirements for Prepackaged Products'⁹, from 24 August 2005.

Examples: Immediate wrappers on chocolates, sticks in lollypops and plastic coating on cheese.

⁶ Regulation (EU) 1169/2011, Annex IX.2.

⁷ Regulation (EU) 1169/2011, Article 2.2.e.

⁸ Regulation (EC) 178/2002, Article 2.

⁹ Refer to website DG Enterprises.

2. Provisions for food prepacked for direct sale

The only mandatory information required by the Regulation¹⁰ for food “prepacked for direct sale”¹¹ is the information on the presence of “allergens”. Member States can have national provisions that require other information, but the European Commission must be informed¹² of these provisions “... without delay”.

IMPACT: The Directive requires all e-marked prepackages, including those prepacked for direct sale, to be marked with more than “allergens”. The Directives require a nominal quantity, an e-mark and the identity of the packer.

Note: For non-e-marked prepacked food Member States will need to inform the European Commission of any other national mandatory labelling requirements for food prepacked for direct sale¹³.

Example: A Member State will need to notify the European Commission if there is national legislation that requires a nominal quantity to be stated on non-e-marked prepackages that are “prepacked for direct sale”.

3. Drained weight

The Regulation requires the marking of “drained net weight” for foods¹³ which are packed in one of the liquid mediums specified¹⁴.

- a. From the Regulation the requirements for solid foods in a “liquid medium” that is not frozen two declarations are required, they are:
 - i. the net weight (the total weight of solid foods and liquid), and
 - ii. the drained net weight.
- b. The requirements for food which has been glazed (has a frozen “liquid medium”) is that¹⁵ “... the declared net weight of the food shall be exclusive of the glaze”. In effect this means that the “drained net weight” will be the same as the “net quantity”. Only one declaration is required.

Note 1: For glazed foods the net weight (which is exclusive of the glaze) equals to the drained net weight.

Note 2: Q&As document adopted in January 2013 clarifies the various options for indicating the above that can be used on the labels of glazed foods

¹⁰ Article 44 in Regulation (EU) 1169/2011 refers to Article 9.1.c in Regulation (EU) 1169/2011.

¹¹ The Regulation article 2.2.e exclude from the definition of “prepacked foods” food that is “... prepacked for direct sale”.

¹² Regulation (EU) 1169/2011, Article 44.3.

¹³ Regulation (EU) 1169/2011, Annex IX.5, first paragraph, first sentence.

¹⁴ Regulation (EU) 1169/2011, Annex IX.5, second paragraph.

¹⁵ Regulation (EU) 1169/2011, Annex IX.5, first paragraph, second sentence.

http://ec.europa.eu/food/safety/docs/labelling_nutrition-labelling_legislation-ganda_application_reg1169-2011_en.pdf (see Q 2.12.2).

Note 3: There is no definition of 'glaze', but it is generally taken as referring to a coating of frozen liquid.

IMPACT: The e-mark applies to the nominal quantity, which is regarded as the net quantity from the Regulation¹⁶ that applies to solid foods in a liquid medium and the liquid medium. However, the net weight for the glazed foods will just be the weight of the food (not including the glaze).

4. Units of measurement

The Regulation specify¹⁷ the unit of measurement that must be used for the net quantity, *viz.* units of volume for liquids and units of mass in the case of other products. There is no definition of 'liquid' and so WELMEC WG 6 is to provide guidance on this. The Regulation permits the expression of the net quantity in units required by national legislation that had been adopted before 12 December 2011; as long as the European Commission was informed of these requirements by 13 December 2014¹⁸. The Regulation requires that "The Commission shall bring them to the attention of the other Member States"¹⁹. See Annex I in this document for the method of notification and the notifications received.

The Directive permits²⁰ the use of units that is a trade practice or permitted by national regulation in the country of destination. These can continue if the Member State notified the Commission by 13 December 2014²¹.

IMPACT: These notified national measures can apply to both e-marked and non-e-marked prepackages. Where the country of destination does not have any national measures in place, then the prepackage needs to be marked in compliance with the Regulation²².

5. Extra information

The Regulation has no prohibition on extra information, and neither does the Directive. There is European legislation²³ requiring that any information given should not mislead the consumer.

¹⁶ Regulation (EU) 1169/2011, Annex IX.2.

¹⁷ Regulation (EU) 1169/2011, Article 23.

¹⁸ Regulations (EU) 1169/2011, Article 42.

¹⁹ Regulations (EU) 1169/2011, Article 42.

²⁰ Directive 76/211/EEC, Article 4.2.

²¹ Regulation (EU) 1169/2011, Article 42.

²² Regulations (EU) 1169/2011, Article 23.

²³ Unfair Commercial Practices Directive 2005/29/EC.

IMPACT: Prepackages can still continue to be marked with quantity in more than one unit of measurement. The WELMEC WG 6 guidance is²⁴ that all extra information should accompany the nominal quantity and be no larger nor more prominent than it.

Example: Tomato ketchup

- a) 300 g; 284 ml
- b) 300 g e; 284 ml
- c) 300 g e; 284 ml e

6. Distance selling

The Regulation requires²⁵ that all the relevant information (except durability date) is available to the consumer before the purchase is concluded, and specifies that all mandatory information needs to be provided at the moment of delivery.

IMPACT: The 'net quantity' must be provided to the consumer prior to concluding the purchase; this is the 'nominal quantity' required by the Directive. Where there are several quantities stated on a prepackage the vendor may not know which is the 'net quantity' (nominal quantity) and so needs to provide all the quantities declared.

7. Height of quantity marking

The Regulation requires²⁶ that the net quantity of foods " ... shall be printed on the package ... in such a way as to ensure clear legibility, ... using a font size where the x-height ... is equal to or greater than 1.2 mm", with an exception for small packages²⁷.

IMPACT:

- a) Where the prepacked food is not e-marked the above is the minimum height, but the printing has to ensure "clear legibility".
- b) For e-marked prepackages of food the requirements in the Directive needs to be met, being the minimum heights referred to in the Directive²⁸.

8. Responsibilities

²⁴ WELMEC Guide 6.4, issue 2 "Guide for packers and importers of E-marked prepacked products", section 4.5, last paragraph.

²⁵ Regulation (EU) 1169/2011, Article 14.

²⁶ Regulation (EU) 1169/2011, Article 13.2.

²⁷ Regulation (EU) 1169/2011, Article 13.3.

²⁸ Directive 76/211/EEC, Annex I, section 3.1.

The Regulation states²⁹ “The food business operator responsible for the food information shall be **the operator under whose name or business name the food is marketed** or, if that operator is not established in the Union, **the importer** into the Union market.”.

The Directive states³⁰ “**The packer or importer** shall be responsible for ensuring that prepackages meet the requirements of this Directive. The quantity of product [...] shall be measured or checked [...] on the responsibility of the **packer and/or importer**.”.

IMPACT:

- a) Where the food business operator is the packer or importer in Europe he is responsible for all the food information, including for ensuring that the quantity requirements in the Directive are met
- b) Where the food business operator is not the packer or importer in Europe then he is responsible for all the food information provided, and he must be able to identify the packer or importer established in Europe who is responsible for ensuring that the quantity requirements are met.

Conclusions

- a) The Regulation impact on the Directive in the areas of:
 - a. what is considered to be the ‘nominal quantity’,
 - b. which units of measurement should be used,
 - c. the height of the quantity declaration, and
 - d. the responsibilities concerning the information.
- b) In such a technical field packers and importers of prepackages of food may need to be made aware of these implications.

²⁹ Regulation (EU) 1169/2011, article 8

³⁰ Directive 76/211/EEC, Annex 1, point 4

Annex I: Notification under Article 42 in the Regulation

Article 42 of Regulation 1169/2011 states “In the absence of Union provisions referred to in Article 23(2) concerning the expression of net quantity for specified foods in a different manner to that provided for in Article 23(1), Member States may maintain national measures adopted before 12 December 2011.

By 13 December 2014, Member States shall inform the Commission about such measures. The Commission shall bring them to the attention of the other Member States.”

As it was not clear as to what those national measures were an enquiry was made on the European Commission’s “Europe Direct” and their response was:

“The procedure is as follows:

The Member State informs the European Commission of these measures through an official letter addressed to the Health and Food Safety Directorate General after which the European Commission services inform Member States in the context of the Working Group on Food Information to Consumers during a dedicated point in the agenda of the meeting, during which the concerned Member States briefly explain the content of their respective retained measures and reply to any questions should they arise.

To date, all the measures that have been brought to the attention of the European Commission have been brought to the attention of Member States as required by the Regulation. There has been no provision for the European Commission to publish these measures in a database or website, however, we attach a list of the measures the Directorate General for Health and Food Safety has received.”

Communications informing the European Commission on the retention of national measures under Article 42 of the Regulation (EU) No 1169/2011.

Member State	Brief description	Date of communication	Ares reference	Comment
UK	e-mark Pre-packed honey to be sold only by weight	17 September 2014	Ares(2014)3064240	The Weights and Measures (Packaged Goods) Regulations 2006 (SI 2006/659) Regulation 8(1)
UK	The UK has a list of foods that, when prepacked, shall be marked with quantity by weight or volume. This applies to both e-marked and non e-marked foods. This permits products to be packed according to trade practices, products include ice cream, soups, sauces and condiments, syrup, mousse and yoghurt	17 September 2014	Ares(2014)3064240	The Weights and Measures (Packaged Goods) Regulations 2006 Regulation 8(1) and The Weights & Measures (Miscellaneous Foods) Order 1988
SE	Use of the decilitre as a unit of measurement for liquid foodstuffs	15 October 2014	Ares(2014)3944977	LIVSFS 2014:4 (H 125) Utkom från trycket 15 oktober 2014
PL	National measures allowing in the case of ice cream, mayonnaise, liquid seasonings, thick sauces, fermented milk products and concentrated milk the expression of the net quantity in units of mass or in units of volume	5 December 2014	Ares(2014)4130404	Minister of Agriculture and Rural Development RRjn(jm)0826z - 53/14 (490-4829)
IE	Sale of draught beer and cider using the "pint" as the measure of volume	12 December 2014	Ares(2014)4233937	STATUTORY INSTRUMENTS. S.I. No. 489 of 2014
NL	Net quantity of high viscosity milk products	25 November 2014	Ares(2014)3985781	NETHERLANDS GOVERNMENT GAZETTE (STAATSCOURANT) Official publication of the Kingdom of the

				Netherlands since 1814 No 30887, 31 October 2014
DE	"Fertigpackungsverordnung" (Regulation on Prepackaging)	22 October 2014	Ares(2014)3676666	All national measures concerned where issued before 12 December 2011. They are regulated in the German Regulation on Prepackaging (Verordnung über Fertigpackungen, FPVO; BGBl. I S. 451, 1307). This regulation was last amended 2008 (BGBl. I S. 1079)