

WELMEC 6.11

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# WELMEC

European Cooperation in Legal Metrology

## Information on Prepackages, whose Quantity Changes after Packing



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European Cooperation in Legal Metrology

WELMEC is a cooperation between the legal metrology authorities of the Member States of the European Union and EFTA.

This document is one of a set published by WELMEC to provide guidance and information to packers, importers and the Competent Departments responsible for ensuring the prepackages meet the specified requirements.

The documents are purely advisory and do not themselves impose any restrictions or additional technical requirements beyond those contained in relevant EU Directives.

Alternative approaches may be acceptable, but the information provided in this document represents the considered view of WELMEC as to the best practice to be followed.

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# 1. Introduction

- 1.1. WELMEC Working Group 6 (WELMEC WG 6) was set up to discuss, and propose solutions for the problems associated with the trading of packaged products between EEA countries. It was decided that a set of documents for inspectors, which could be used by Competent Departments in all EEA countries, should be produced. The intention of the guides is to achieve a uniform level of enforcement.
- 1.2. This document is part of a series of documents published by WELMEC, which are primarily intended to provide guidance and information to all those concerned with the application of Directives 76/211/EEC and 2007/45/EC for prepacked products. The documents are intended to lead to a uniform interpretation and enforcement of these directives and assist in the removal of barriers to trade.

The following documents are agreed by WELMEC and published on their website at <http://www.welmec.org/latest/guides.html>

- 6.0 Introduction to WELMEC documents on prepackages
- 6.1 Definitions of terms
- 6.2 Translations of terms
- 6.3 Guidance for the Harmonised Implementation of Council Directive 76/211/EEC as amended
- 6.4 Guide for packers and importers of e-marked prepacked products
- 6.5 Guidance on Controls by Competent Departments on “e” marked Prepackages
- 6.6 Guide for recognition of procedures
- 6.7 Guide for Market Control on Prepackages. For Competent Departments
- 6.8 Guidance for the Verification of Drained Weight, Drained Washed Weight and Deglazed Weight and Extent of Filling of Rigid Food Containers
- 6.9 Prepackages - Uncertainty of Measurement
- 6.10 Information on Controls on Prepacked Products
- 6.11 Information on Prepackages, whose Quantity Changes after Packing**
- 6.12 Measuring Container Bottles – Guide on Directive 75/107/EEC

## Disclaimer

- 1.3. WELMEC WG 6 recognised the importance of international trade and at their meeting of 15 May 1998, agreed that the World Trade Organisation acceptance of International Organisation for Legal Metrology (OIML) Recommendations<sup>1</sup> be reflected in its work. Consequently OIML Recommendations have been noted in this document for guidance, it being recognised that domestic legislation may differ from these recommendations. It is also recognised that only the Courts can definitively interpret the legislation, and this document does not affect domestic legislation. This document is a recommendation of best practice based on the opinions of the experts in WELMEC WG 6.

## 2. The Issue

- 2.1. The Directive 76/211/EEC<sup>2</sup> (in this document this Directive is referred to as the Directive) does not specifically consider that the quantity of product in a prepackage may change between packing and use<sup>3</sup>. Any change of quantity is dependent on the product, the type of packaging used and the environment in which the prepackages are stored. The causes of the change in quantity include desiccation, loss of solvents, hygroscopic changes and natural changes in the product such as composting.
- 2.2. As a result it is not clear as to when the quantity of product in a prepackage needs to comply with the requirements of the Directive, which has led to different interpretations in Member States. This may result in unfair competition, not only between European packers but also between European packers and packers in third countries whose prepackages are imported.

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<sup>1</sup> OIML R 79 (1997): Labeling requirements for prepackaged products, OIML R 87 (2004): Quantity of product in prepackages, and OIML R 138 (2007): as amended in 2009: Vessels for commercial transactions.

<sup>2</sup> 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).

<sup>3</sup> The type of product susceptible to change in quantity includes, but is not restricted to, flour, soap, cosmetic products, fruits, vegetables, mushrooms, growing media and soil improvers, cheese and bread.

### 3. Background

- 3.1. The Directive specifies the following three quantity requirements<sup>4</sup> (also known as the 3 packers' rules):
- the actual contents shall not be less, on average, than the nominal quantity,
  - the proportion of prepackages having a negative error greater than the specified tolerable negative error shall be sufficiently small for batches of prepackages to satisfy the requirements of the tests specified in Annex II of the Directive, and
  - no prepackage shall have a negative error greater than twice the tolerable negative error.
- 3.2. The Directive requires that prepackages covered by the Directive shall be **made up** in such a way that the completed packages satisfy the above requirements<sup>5</sup>. This suggests that the quantity requirements have to be satisfied at the time of packing.
- 3.3. The Directive goes on to state that checks shall be carried out by the Competent Departments of the Member States by sampling on the packers' premises or, if this is not practicable, on the premises of the importer or his agent established in the Community<sup>6</sup>.
- 3.4. Checks at packer's premises are likely to be carried out during packing or shortly after packing during which time the packer can control the environment of the storage area.
- 3.5. The Directive also permits Competent Departments to carry out other checks **at any stage in the marketing process**, in particular for the purpose of verifying that prepackages meet the requirements of the Directive<sup>7</sup>.
- 3.6. Similarly, the OIML recommendation<sup>8</sup> states the same quantity requirements for prepackages covered by the Directive. The recommendation states that<sup>9</sup> "A prepackage shall meet the requirements ... **at any level of distribution** including at the point-of-pack, import, distribution and wholesale transactions, and sale (e.g. where a prepackage is offered or exposed for sale or sold)."
- 3.7. Checks carried out at the premises of importers or their agents may very well identify prepackages not complying with the quantity requirements as they may have been packed some time ago and be subject to handling and environments, which causes the quantity to change.
- 3.8. Producers (packers and importers) of prepackages want the customer to purchase the products in good quality, and to assist this producers inform other organisations in the distribution chain on how to handle and store the products. Sometimes this is achieved by the labelling of the outer containers or pallets with the requirements. Examples of the

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<sup>4</sup> Directive 76/211/EEC, Annex I, 1.

<sup>5</sup> Directive 76/211/EEC, Annex I, 1.

<sup>6</sup> Directive 76/211/EEC, Annex I, 5.

<sup>7</sup> Directive 76/211/EEC, Annex I, 6.

<sup>8</sup> OIML R 87 (2004): Quantity of product in prepackages.

<sup>9</sup> OIML R 87 (2004): Quantity of product in prepackages, Section 3.

information provided include the temperature of storage, the need for dry conditions and the height of stacking.

- 3.9. Producers also need to comply with all the other relevant legislation, which includes the general requirement not to mislead consumers<sup>10</sup>. Even if information, including quantity, is factually correct, it must still not mislead a consumer<sup>11</sup>. Directive 2005/29/EC also recognises that omissions can be misleading<sup>12</sup>.
- 3.10. Any prepackages that meet the three quantity requirements as stated in Section 3.1. are deemed not to mislead as to quantity. This means that as long as the quantity does not have a deficiency greater than twice the specified tolerable negative error<sup>13</sup>, it is considered that the quantity declaration is not misleading.
- 3.11. The quantity marked on a prepackage is usually without any qualifying statement (such as 'when packed'). However, such a statement is found on some products, whose quantity changes with time. It is important that this statement, although factually correct, does not mislead which it will if the actual quantity of product becomes deficient by more than twice the tolerable negative error.
- 3.12. Where the actual quantity of product in a prepackage does change by more than twice the tolerable negative error, the packer can ensure that the quantity statement never becomes misleading by overfilling to ensure that the actual quantity of product in each prepackage never has a deficiency greater than twice the tolerable negative error based on the labelled quantity.

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<sup>10</sup> Directive 2005/29/EC, concerning unfair business-to-consumer commercial practices in the internal market

<sup>11</sup> Directive 2005/29/EC, Article 6.

<sup>12</sup> Directive 2005/29/EC, Article 7.

<sup>13</sup> Directive 76/211/EEC, Annex I, 2.4.

## 4. Present Situation

- 4.1. The requirements for the quantity of product, which change after packing, are not consistent across Europe. Packers are unsure as to the requirements in Member States and the end users have no guarantee that the defined quantity requirements are met.
- 4.2. There are generally three practices in use at present, which are:
- the quantity requirements have to be met at time the prepackages are ready to be placed on the market,
  - the quantity requirements have to be met at time of purchase by the ultimate consumer, and
  - the quantity requirements have to be met at time of packing, and that no prepackage shall ever have a deficiency of greater than twice the tolerable negative error anywhere in the distribution chain.
- 4.3. The legislation in only three Member States<sup>14</sup> has the requirements in the last mentioned practice above.

## 5. Recommendation

- 5.1. In order that packers have to meet the same requirements, WELMEC WG 6 recommends that Competent Departments apply the Directive's requirements for these products whose quantity changes after packing as follows:
- the prepackages shall meet the three quantity requirements as stated in Section 3.1. at the time the prepackages have passed the quantity checks specified in the packer's or importer's<sup>15</sup> quantity control system, and so are ready for placing on the market,
  - the packer or importer shall be able to demonstrate this from records, and
  - no prepackages shall have a deficiency greater than twice the tolerable negative error anywhere in the distribution chain.
- 5.2. In order to preserve the quality of the product, the packer or importer should provide organisations in the distribution chain with the necessary information as to the storage and handling that needs to be observed.

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<sup>14</sup> Belgium's article 1 of the Royal decree from December 20<sup>th</sup> 1972 concerning quantity marking, but this does not apply to cosmetics (Royal decree of March 30<sup>th</sup> 1979) for which the first mentioned practice in 4.2 applies, Bulgaria's 63 of the LAW ON MEASUREMENTS from November 8<sup>th</sup> 2002, and Iceland has regulation 437/2009(/IS), Annex I, 6.

<sup>15</sup> 'Importer' shall mean any natural or legal person established within the Community, who places a product from a third country on the Community market, Decision 768/2008/EC, Article R1, 5.



## 6. Consultation

- 6.1. In drawing up this information, any views and comments expressed by representatives of all members and associate members of WELMEC and the organisations listed in Annex 1 of this document have been considered.

## Annex 1 Organisations consulted

<b>Colipa</b>	The voice of Europe's cosmetic, toiletry and perfumery industry.
<b>EPAGMA</b>	European Peat & Growing Media Association.
<b>FEA</b>	Fédération Européenne des Aérosols or European Aerosol Federation.
<b>Freshfel</b>	European fresh produce industry.
<b>PROFEL</b>	Formerly OEITFL, European Association of Fruit & Vegetable Processing Industries.
<b>ANEC</b>	European consumer voice in standardisation.
<b>BEUC</b>	European Consumers Organisation.
<b>COFACE</b>	Confederation of Family Organisations in the European Union.
<b>Euro Coop</b>	European Community of Consumer Co-operatives.