

WELMEC 6.11

Issue 1

WELMEC

European cooperation in legal metrology

Guidance for Prepackages whose Quantity Changes after Packing



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European cooperation in legal metrology

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

This document is one of a number published by WELMEC to provide guidance and assistance to packers, importers and competent departments responsible for prepacked products.

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

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

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Introduction

- 1.1 This document is part of a series of documents published by WELMEC that cover requirements for prepacked products:
- 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
 - 6.4 Guide for packers and importers of 'e' marked prepacked products
 - 6.5 Guidance on Controls by Competent Departments
 - 6.6 Guide for recognition of procedures
 - 6.7 Guide for Market Controls on Prepackages for Competent Departments
 - 6.8 Guidance for the Verification of Drained Weight
 - 6.9 Prepackages - Uncertainty of Measurement
 - 6.10 Information on Controls on Prepacked Product
 - 6.11 Guidance for Prepackages whose Quantity Changes after Packing**

These documents represent the opinion of WELMEC and are published on their website (www.welmec.org).

This series of documents primarily intends to provide guidance to all those concerned with the application of directives 76/211/EEC and 2007/45/EC on prepackages (the Directives) and of non harmonised areas related to prepacked product such as drained weight requirements. They are intended to lead to a uniform interpretation and enforcement of these Directives and assist in the removal of barriers to trade.

Disclaimer

- 1.2 The Working Group 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 be reflected in its work. Consequently OIML Recommendations¹ 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 the Working Group.

¹ OIML R 79 (1997): Labelling requirements for prepackaged products, and OIML R 87 (2004): Quantity of product in prepackages, and OIML R138 (2007): as amended in 2009: Vessels for commercial transactions

2 The Issue

- 2.1. The Directive 76/211/EEC² (the Directive) does not specifically consider that the quantity of product in a prepackage may change between packing and use³. 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.

3 Background

- 3.1 The Directive specifies the following three quantity requirements⁴:
- 3.1.1 the actual contents shall not be less, on average, than the nominal quantity;
- 3.1.2 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, and
- 3.1.3 no prepackage having 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. This suggests that the quantity requirements have to be satisfied at the time of packing.

² 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).

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

⁴ Annex 1, paragraph 1

3.3 The Directive goes on to state that checks shall be carried⁵ 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.

3.4 Checks at packer's premises are likely to be carried out during packaging 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 checks⁶ **at any stage in the marketing process**, in particular for the purpose of verifying that prepackages meet the requirements of the Directive.

3.6 Similarly, the International recommendation⁷ states the same quantity requirements for prepackages covered by the Directive. The recommendation states⁸ that "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 of prepackages want the customer to purchase the goods 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 information provided include the temperature of storage, the need for dry conditions and the height of stacking.

⁵ Directive 76/211/EEC, Annex 1.5

⁶ Directive 76/211/EEC, Annex 1.6

⁷ OIML R87 (2004), Quantity of product in prepackages

⁸ Paragraph 3 of OIML R87

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 these practices in use at present which are:

4.2.1 That the quantity requirements have to be met at time the prepackages are ready to place on the market.,

4.2.2 That the quantity requirements have to be met at time of purchase by the ultimate consumer, and

4.2.3 That 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 states⁹ has the requirements in 4.2.2 above.

⁹ Belgium's article 1 of the royal decree from December 20th 1972 concerning quantity marking, but this does not apply to cosmetics (royal decree of March 30th 1979) for which 4.1.1 applies; Bulgaria's 63 of the LAW ON MEASUREMENTS from November 8th 2002, and Iceland has regulation 437/2009/(IS) Annex I, 6.

5 Recommendation

5.1 In order that packers have to meet same requirements, WELMEC WG6 recommends that Competent Departments apply the Directive's requirements for these products whose quantity changes after packing as follows:

5.1.1 That the prepackages shall meet the three quantity requirements at time the prepackages have passed the quantity checks specified in the packer's or importer's¹⁰ quantity control system, and so are ready for placing on the market, and

5.1.2 be able to demonstrate this from records, and

5.1.3 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 provides organisations in the distribution chain with the necessary information as to the storage and handling that needs to be observed.

6 Consultation

6.1 In drawing up this guidance, any views and comments expressed by representatives of all members and associate members of WELMEC, and the organisations listed in Annex have been taken into account.

¹⁰ '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

ANNEX 1 – Organisations consulted

Colipa	- the voice of Europe's cosmetic, toiletry and perfumery industry
EPAGMA	– European Peat & Growing Media Association
FEA	- (Fédération Européenne des Aérosols or European Aerosol Federation)
Freshfel	- European fresh produce industry
PROFEL Industries	– formerly OEITFL - European Association of Fruit & Vegetable Processing
ANEC	- European consumer voice in standardisation
BEUC	- European Consumers' Organisation
COFACE	- Confederation of Family Organisations in the European Union
Euro Coop	- European Community of Consumer Cooperatives