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# **Metrological Requirements for Prepackaged Products:**

**Follow-up to the public consultation and  
WELMEC wg6 consultation**

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## Background

After over 20 years of implementation of the EC prepackaging legislation, a team in the framework of the SLIM-IV exercise (Simpler Legislation for the Internal Market), comprising of members designated by Member States and independent experts proposed by the Commission, advised to simplify the current legislation<sup>1</sup>. The Commission commented that it welcomed the advice and committed itself to further study the issues brought up.

Current Community law on pre-packaging deals with ranges of nominal quantities and metrological requirements.

- Ü For liquids for human consumption, Directive 75/106 covers both aspects.
- Ü For other liquids and non liquids, two Directives exist, dealing respectively with metrological requirements (Directive 76/211) and ranges of nominal quantities (Directive 80/232).

In October 2004, the Commission presented a proposal to deregulate ranges of nominal quantities, by abolishing Directives 75/106 and Directive 80/232. This proposal maintains however mandatory pack sizes for some sectors, and makes Directive 76/211 also applicable to liquids for human consumption. In this proposal, reference was made to further steps to also update the existing legislation on metrological requirements of pre-packaging<sup>2</sup>.

The current document deals with the question whether Community legislation on metrological requirements, as they will be contained exclusively in Directive 76/211, should be updated.

Between 24 January and 15 March 2005, DG Enterprise and Industry held a public Internet consultation with consumers, producers, retailers and authorities, following the Commission's new minimum consultation standards<sup>3</sup>. The parties were asked to give their views on alternatives for the existing Community legislation on labelling of quantities and the metrological requirements for prepackages. A Commission staff working paper setting out the key issues served as the main background paper<sup>4</sup>.

During the 8 weeks of the duration of the consultation, the specific page on Europa<sup>5</sup> received over 2000 hits, over 450 completed questionnaires in the on-line survey were returned, many from consumers (see for the full report on the IPM on-line survey: Annex 1), and 34 written submissions were received: 23 from producers and 11 from public authorities.

The public consultation intended to collect new ideas and arguments. The survey consisted of questions formulated by the Commission services, while the written statements allowed respondents to contribute as they liked.

The results were examined with public authorities in a meeting on 19/20 May 2005 of Working Group 6 of WELMEC, the Western European Legal Metrology Cooperation.

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<sup>1</sup> [COM\(2000\)56 final](#), pp 9-11 and 21-22 the SLIM exercise considered both metrological requirements in pre-packaging as well as ranges of sizes; the latter are not the subject of this document.

<sup>2</sup> [COM\(2004\)708](#), p2 : « . metrological requirements will be the subject of a later proposal. »

<sup>3</sup> COM(2002)704-final, 11.12.2002

<sup>4</sup> [Working document](#) : Metrological requirements of Prepackages, Commission services, 2005

<sup>5</sup> [http://europa.eu.int/comm/enterprise/prepack/metrol\\_requir/inmetrolog\\_requir\\_en.htm](http://europa.eu.int/comm/enterprise/prepack/metrol_requir/inmetrolog_requir_en.htm)

The current report describes the initial conclusions that can be drawn from the public consultation, including the IPM survey and the written statements, and the meeting with national authorities in the framework of WELMEC.

It is suggested, as a conclusion, that regulatory change is not justified and that most issues identified can be dealt with by voluntary documents and guidance.

Views of stakeholders may be sent before 15 October 2005 to the following address:

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## Views expressed and follow-up

### 1. Scope

Views expressed on the scope are that:

- including business to business sales would push up market surveillance costs
- on the other hand, business to business sales for instance to hospitals, schools and SMEs are equally entitled to protection provided under legal metrology and would seem to be included in the scope of current legislation
- most sales to consumers are in packs up to 10 k/l
- the international standard is for prepacked products from 0g/ml to 50k/l<sup>6</sup>
- testing small quantities justifies costs only if product is expensive (saffron)<sup>7</sup>
- the directive on cosmetics does not require indication of quantity smaller than 5g/ml<sup>8</sup>
- however, costs may be justified in the case of large volumes of sales of lipsticks and eyeliners in less than 5g packs
- meat producers would welcome packs of over 25k and B2B to be included
- cement producers allow a 5% tolerance on a 25k bag and do not want to be included
- any general legal framework on metrological requirements should take into consideration specific products already harmonised (foodstuffs, cosmetics), if need be, by excluding them for particular aspects from the scope of a general directive.

Ü Most prepacked products sold are already included in the scope of the current directives on prepackaging. The directive also covers goods delivered to hospitals and schools and business-to-business. Increasing the scope to cover quantities up to 25 or 50 k/l would almost exclusively cover sales from business to business. Even if it could make sense to control some specific products sold in quantities of under 5g/ml on metrological requirements, it would be disproportionate to extend such control to all products. For these reasons it would seem that there is no immediate need to enlarge the scope.

### 2. Units of measurement

Views on units of measurement are that:

- other units should be harmonised, voluntary and verifiable to international standards
- international standard OIML R87 includes number, length and area as units of measurement )
- alternative indications are already existing under the detergents Regulation<sup>9</sup> that requires mandatory indication of number of washes on the front panel, while the quantity indication remains necessary for metrological checks according to directive 76/211,
- the directive should clarify the unit to be used per product for the purpose metrological testing

<sup>6</sup> [OIML Recommendation 87](#) (OIML R87) on the “Quantity of products in prepackages”, 2004

<sup>7</sup> Labelling of Foodstuffs Directive 2000/13 Art 8.5.b : “It is not compulsory to indicate the net quantity of foodstuffs less than 5g/ml. However, this provision does not apply to spices and herbs”

<sup>8</sup> Council Directive 76/786/EEC, Article 6.1.b

<sup>9</sup> [Regulation\(EC\) 648/2004](#) on detergents: Article 11 and Annex VII.B

- in cosmetics and foodstuffs, if weight or volume is not relevant, the number in a pack should be indicated unless this is easily visible<sup>10</sup>
- the directive must require that all products must at least be labelled in volume or weight.

Ü By requiring indications to be given in weight or volume, the current directives cover most prepacked products. Additional indications in number, length or area are not as such excluded. Any claims should be verifiable; controls can be carried out on the basis of international standards. As regards semi-solids, e.g. ice cream or toothpaste, guidance on implementation might be sufficient to solve any problems of implementation, i.e. indications only in volume, i.e. (milli)litres.

### 3. Definition of the quantity to be declared

There is widespread agreement to follow international definitions of content excluding the packaging not to be consumed. Respondents mentioned the following points:

- the quantity indicated should exclude wrapping of sweets, detergent tablets and wax on cheeses
- a non-dissociable dissolvable film on detergent liquitabs should be included as product
- the quantity should exclude the propellant (in aerosols) and other carrier products
- on the other hand, the international standard states that the propellant should be included in the net quantity statement<sup>11</sup>

Ü The current provisions in the directives allow for an implementation based on the international definitions of content (quantity) by OIML. If appropriate guidance can be developed to ensure consistent implementation throughout the Union, e.g. dissolvable films on the product are included in the content, and individual wrappings of items and 'loose' wax on cheeses are excluded from the content. The international standard should also be followed for aerosols, i.e. propellants should continue to be included in the quantity, but this issue will be treated by the aerosols directive, currently under revision.

### 4. Drained weight (quantity)

There were the following comments on drained weight:

- Drained weight only concerns foodstuffs
- The food labelling Directive 2000/13/EC, Art 8.4, gives guidance on the status of liquid mediums
- It also requires declaring on the label both net weight and drained weight, so the liquid medium is implicit as the difference between the two (in conformity with the Codex Alimentarius<sup>12</sup>).

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<sup>10</sup> Council [Directive 76/786/EEC](#), Article 6.1.b: "for pre-packages normally sold as a number of items, for which details of weight or volume are not significant, the content need not be given provided the number of items appears on the packaging. This information need not be given if the number of items is easy to see from the outside or if the product is normally only sold individually.", see also [Directive 2000/13](#) Art 8.3.

<sup>11</sup> [OIML Recommendation 79](#) (OIML R79) "Labelling requirements for prepackaged products", 1997, Par 5.3.2

- the food labelling directive strikes a workable balance between OIML and Codex Alimentarius (OIML requires both a solids and liquids declaration<sup>13</sup> and Codex only indication of solids).
- Codex Alimentarius requires the average system to verify drained weight<sup>14</sup>

Ü Labelling of drained weight is already fully covered by the food labelling Directive<sup>15</sup> and the methods of checking the drained net weight are to be adopted under its comitology procedure. In accordance with Codex such rules should implement the average system, which could be based on the current legislation on prepackaging.

## 5. Frozen products

Comments concerning frozen products were:

- Water glazed frozen products are comparable to drained weight
- Frozen products in prepackages only concerns foodstuffs
- Food labelling directive 2000/13/EC, Art 8.4 on drained weight mentions liquid mediums in frozen products
- Distinguish between water naturally present in product (vegetables) and water artificially introduced (glazed fish)

Ü Labelling of drained weight of frozen products is already fully covered by the food labelling Directive and its procedures. When frozen food products contain added water there should be an indication of drained weight; in the case of no adding of liquid, there should be no mention of drained weight.

## 6. Packer and Importer: responsibility and identification on the label

The following remarks were made:

- Packing is a specific industrial activity that can be carried out by the manufacturers of the product or by a separate packer who is not responsible for the product as such. Manufacturers or distributors can have different packers for the same product. Similarly, packers can work for various manufacturers or distributors. Often manufacturers or distributors first outsource packing for testing a product, before starting a packing line themselves.
- Authorities in charge of enforcement suggest that the packer or importer should remain the person responsible for conforming to the metrological requirements.
- The cosmetics directive<sup>16</sup> requires the name of the 'manufacturer or the person responsible for marketing the cosmetic established within the Community'; abbreviations known to the authorities are allowed.

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<sup>12</sup> [CODEX STAN 1-1985 \(Rev. 1-1991\)](#) point 4.3.3: In addition to the declaration of net contents, a food packed in a liquid medium shall carry a declaration in the metric system of the drained weight of the food. For the purposes of this requirement, liquid medium means water, aqueous solutions of sugar and salt, fruit and vegetable juices in canned fruits and vegetables only, or vinegar, either singly or in combination

<sup>13</sup> OIML R87, Annex C (informative)

<sup>14</sup> [CODEX STAN 1-1985 \(Rev. 1-1991\)](#) point 4.3.3, footnote 2: The declaration of drained weight is subject to enforcement by reference to an average system of quantity control.

<sup>15</sup> [Directive 2000/13](#) Art 8.4 and 20

<sup>16</sup> Council [Directive 76/786/EEC](#), Article 6.1.a

- The food labelling Directive<sup>17</sup> requires the name and address of ‘the manufacturer or packager or of a seller established within the Community’ and this flexibility should be maintained.
- According to the ruling by the European Court of Justice<sup>18</sup>: under the foodstuffs labelling directive the packer mentioned on the label need not be situated within the Community; the ruling does not make reference to the prepackaging directives.
- International standard (OIML R79) requires an additional indication when the name of the person appearing on the label is not the manufacturer or packer: e.g. “manufactured for..”, “distributed by ...”, “marketed by...”, “imported by ...” or “sold by ...”. It also allows codes to be added indicating the identity of a manufacturer or packer.<sup>19</sup>
- The current prepackaging directives require a mark of an inscription enabling the authorities to identify the packer or the person responsible for the packing (arranging for the packing to be done) or the importer established in the Community<sup>20</sup>.
- Surveillance authorities suggest that the packer or importer should reside in the EU, although this rather rigid requirement would seem difficult to justify in WTO/TBT.
- The international standard for foodstuffs (Codex Alimentarius) requires the mention of “the name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the food”<sup>21</sup>.

Required mention of name and address on the label as allowed by various EC laws and international standards

	Prepackaging Dir 76/211	Cosmetics	Food labelling Dir 2000/13	OIML R79	Codex
Manufacturer		x	x	x	x
Packer	x		x	x	x
Person marketing		x			
Importer	x			x	x
Distributor			x	x	x
Exporter					x
Vendor			x	x	x

- ü All current directives require identification of a person who is responsible for the conformity of a prepacked product as regards metrological requirements.
- ü In the case that the person, whose name and address is mentioned on the label, is not the packer or importer established in the Community, that person should at all times be able to indicate to the authorities the name and address of the packer.
- ü It would seem that there are no conflicts with the simultaneous application of the existing directives. Through guidance the implementation of the cosmetics directive and the directives on metrological requirements, which require

<sup>17</sup> [Directive 2000/13](#) Art 3.1(7)

<sup>18</sup> [ECJ ruling C - 83/96](#): Obligation to state details of one of the traders responsible for the manufacture or marketing of the foodstuff - Obligation to indicate details of a trader established within the Community applicable to the seller only

<sup>19</sup> OIML R79 point 4

<sup>20</sup> Annex I.3.2 of Dir 75/106 and Dir 76/211

<sup>21</sup> CODEX GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS  
[CODEX STAN 1-1985 \(Rev. 1-1991\)](#) point 4.4



indicating the packer or importer established in the Community, can be made coherent.

## **7. Automatically filled batches**

Respondents agree to continue the current method of testing on average filling, which complies with the international standard (OIML R87), and to make it mandatory to the exclusion of any other methods.

Respondents also welcome the possibility of simpler and less costly tests, provided they are statistically sound. These would also allow to better control metrological requirements of imports and in shops.

- Ü There is across the broad support to maintain the reference test currently in the directives. Guidance could elaborate simpler and less costly but statistical sound tests and sampling plans in order to verify ‘prima facie’ whether the metrological requirements are observed and whether there is a need to apply the reference test.

## **8. Glass bottles as measuring containers**

Comments were that:

- Measuring containers should be restricted to glass/rigid bottles<sup>22</sup>
- Check tolerances

- Ü The current directive on bottles used as measurement containers<sup>23</sup> should become the only one to be applied. This could, in practice, be achieved by Member States retracting parallel legislation, so that only the EC directive remains.

## **9. Manual filling and the option of minimum filling**

Producers and authorities want to keep the minimum filling as an option for manufacturers while it is the most appropriate approach in the case of manual filling:

- Minimum filling should, in principle, always pass the reference test,
- Manual filling to minimum, notably in small enterprises, requires simpler testing,
- Also sophisticated set-up of individual mechanical filling with automatic reweighing of the filled product, could qualify for simpler testing.

- Ü The current directives allow for minimum filling. If appropriate, guidance could further elaborate the option of minimum filling and tests.
- Ü It would seem not necessary to indicate ‘minimum filling’ specifically because this could be confusing and international standards do not allow such indications.
- Ü Whilst reference testing remains applicable, screening tests that are simpler but statistically sound should be elaborated with stakeholders and national authorities in WELMEC. Depending on the result of the screening test authorities can decide to carry out the full reference test.

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<sup>22</sup> [OIML Recommendation 96](#) (OIML R96) "Measuring container bottles" , 1990: “rigid and stable enough to give metrological results that are as good as those obtained with glass”

<sup>23</sup> [COUNCIL DIRECTIVE 75/107/EC](#) of 19 December 1974 on the approximation of the laws of the Member States relating to bottles used as measuring containers

- Ü Part of the guidance could be the possibility for the packer to declare that he implements minimum filling.

## 10. Filling differently sized products (catchweighing)

Comments were that

- these products are currently not in the scope of the prepackaging directives and would require a legislative proposal to be formally included
- catchweighed products would seem to be mostly packed close or at the point of sale and do not constitute an important part of intra-EU trade
- minimum filling must be mandatory in the case of catchweighing
- although an alternative view is that reference testing on the average with tolerances is possible.

- Ü A proposal would be needed to extend the scope to include catchweigh filled products. Any such proposal would need to be justified based on the existence of significant trade flows and/or trade barriers resulting from discrepancies in national legislation.
- Ü As an alternative, Member States could agree on guidance coherent with the current directives and adapt national law, if appropriate.

## 11. Minimum size and placing of the quantity declaration

Business associations were unanimous in supporting the current legislation and rejecting changes in size and placing of the quantity indication. Modifications would require restyling of labels and, if introduced without a sufficient transition period, lead to large losses on existing labels. Also the primary panel could become too full and confusing, notably in the case of small packages, while it conflicts with OIML<sup>24</sup> and would cause trade barriers by the Community on the rest of the world.

The IPM survey showed:

- As regards the size of the quantity indication, a majority of consumers (52%) thinks it is currently written large enough. This view is also held by 80% of the public authorities. However, the majority of females (52%) disagree as do 62% of the consumer organisations.
- As regards the placing of the quantity indication, a majority of the consumers (55%) is of the opinion that it is sufficient to have the quantity indication somewhere on the package, as is currently the rule. Notably, this is the opinion of two thirds of the respondents younger than 25. However, 50% of the over-55-years want the quantity to be indicated on the front of the package and this is also the opinion of 60% of the consumer organisations and 70% of the public authorities.
- Visually impaired consumers recommend a sans serif font such as Arial sharply contrasting against the background for maximum readability or even Braille

- Ü There is no clear view across the board. Stricter implementation of the current rules<sup>25</sup>, notably that indications must be “indelible, easily legible and visible on the prepackage in normal conditions of presentation” could be the subject

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<sup>24</sup> OIML R79, Annex B (informative) on sizes retakes the current rules in Dir 75/106 and 76/211 whilst in the mandatory part, Art 5.1 indicates that the declaration of the net quantity of the product should be on the primary display panel.

<sup>25</sup> Directive 76/211/EC Annex I.3.1

of further guidance. Maintaining the current rules would in any case be in accordance with international standards<sup>26</sup>.

## 12. Slack fill

Comments regarding slack filling were that:

- It should only be allowed for technological reasons for which Codes of Practice could be developed
- Control of slack fill would be difficult if not impossible
- Slack fill should not be declared on label because it would be confusing and lead to false comparisons
- Non functional slack fill is already prohibited by the Packaging and Packaging Waste directive
- For Aerosols the issue should be treated under the Aerosols directive

From the IPM survey it appeared that a large majority of consumers (70%) does not consider it necessary to indicate slack capacity and surplus air against crushing, e.g. of potato crisps, cornflakes and biscuits.

Ü For these reasons, there is no need for specific provisions on slack fill.

## 13. Deceptive packaging

Respondents agreed that existing legislation on Misleading Practices and Packaging and Packaging Waste is sufficient. The international standards are quite general in their treatment of the issue<sup>27</sup>

Ü Given that the existing Community directives on Packaging and Packaging Waste and Misleading Commercial Practices cover such issues in a general and comprehensive way, there is no need for specific provisions on deceptive packaging.

## 14. Quantity declaration of free offers

Industry welcomes a consistent approach on this. The following comments were made:

- Include the free quantity under total quantity and allow indications of free quantities but not as part of the overall quantity indication or in the similar size and type.
- If the free sample is offered in separate packaging with a quantity marked under the Cosmetics directive, it need not be included in the indication of the nominal content<sup>28</sup>.

Authorities are cautious on free offers and refer to national practices. For instance, free offers should be exceptional. It is the overall contents that should be labelled. Where indications are given on free offers, these should not be more prominent than the actual legal indication of contents.

Ü Consumers should be informed by the mention of the total nominal quantity (content) if free quantity is included. Any indications on the quantity given for

<sup>26</sup> OIML R79 para's 5.1 principle display panel), 5.5.2 easily legible boldface on a contrasting background) and 5.5.3 and Annex B (size indication increasing with weight)

<sup>27</sup> OIML R79, point 6 (misleading practices) and OIML R87, Annex E (slack fill)

<sup>28</sup> Council [Directive 76/786/EEC](#), Article 6.1.b

free may be mentioned but not as part of the overall content indication and should not give rise to confusion. Guidance may clarify this.

## 15. Desiccating products

The soap, peat and cosmetics industry agree with the practice that checks are carried out at packers premises immediately after packing, and they would welcome this also for imports, i.e. no checks at the importers premises. Their arguments are that:

- Average, informed consumer should know about desiccation as phenomenon of certain products, so indication is not needed.
- Change would hit small and artisan producers, including those in the niche natural soaps market.
- Improved packaging does not exist and will conceivably not exist.
- Codex requires for foodstuffs that the declaration of net contents represents the quantity at the time of packaging and is subject to enforcement by reference to an average system of quantity control<sup>29</sup>.

Authorities on the other hand welcome the mention of the desiccating nature via a clear warning and consider that any found deficiency should justifiable. They would accept the solution of not less than twice the legal tolerance<sup>30</sup> at any point in the distribution chain or would even want to ensure that contents conform to the reference test until the best-before-date. Guidance could include tables of desiccation of specific products in relation to shelf life<sup>31</sup>.

Currently for certain foodstuffs it is not compulsory to indicate the quantity of products that are subject to considerable desiccation<sup>32</sup>. For this reason it would not seem reasonable to have stricter labelling rules for non-foodstuffs, nor to subject already exempted foodstuffs to further controls after packaging.

The IPM survey showed that, as regards desiccating products, such as cheese and soap, a slender majority (50%) wants the quantity to be correct on the sell-by date and this opinion is supported by 75% of the consumer organisations. However, 55% of consumers under 25 years disagree as do public administrations (55%).

- ü A change to the current rules of checking metrological requirements at the packer's premises would mean that the Community diverges from international standards and constitutes a new barrier to trade. On the basis of the IPM survey showing that nearly an equal number of respondents are in favour of opposing views, it is suggested to follow principles that are consistent with international standards. The current directives are consistent with international standards, which prescribe controls at the packer's premises.
- ü Guidance for tables indicating normal desiccation of products over time would help market surveillance authorities pin-point where controls should be carried out at the packer's premises.

<sup>29</sup> [CODEX STAN 1-1985 \(Rev. 1-1991\)](#) point 4.3.1, footnote 1

<sup>30</sup> In analogy to [Directive 76/211/EC](#), Annex I point 1.1.3

<sup>31</sup> Such tables concerning desiccation rates per type of product are in use in DE and CH

<sup>32</sup> Labelling of Foodstuffs [Directive 2000/13](#) Art 8.5.a : "It is not compulsory to indicate the net quantity in the case of foodstuffs which are subject to considerable losses in their volume or mass and which are sold by number or weighed in the presence of the purchaser".

## 16. Conformity Assessment and Enforcement

Some in industry consider that more choice of methods to assess conformity should be available to choose from for packers. Procedures may differ and reduce the level playing field: some Member States are alleged to exercise very limited control, whilst other Member States have relatively stringent procedures.

Others in industry consider that the current system works well without external control. Mandatory third party verification would introduce unnecessary costs.

Authorities in charge of market surveillance are in favour of keeping the current situation, although they suggest improvements:

- enforcement should remain the responsibility of authorities and it is much more efficient if packers are recognised because packages cannot be easily traced once they are distributed
- packers procedures should be recognized by a competent authority
- the case is made for leaving procedures to subsidiarity because of the need to educate business
- if procedures harmonised this should not lead to increased costs for business
- mutually recognised third party certification should be included as an option, not an obligation
- necessary guarantees should be formulated regarding importers

There is consensus that differences in implementation between Member States should be reduced. Concern is, however, that imposing a uniform Community system may lead to unnecessary costs particularly for SMEs, without giving any benefits.

A distinction should be kept between methods/procedures available to packers and methods of verification/enforcement for authorities.

Too little attention is currently given to importers.

- Ü Guidance could be developed to reflect the concept of suitability of the measuring instrument and describing procedures which are recognised by the authorities, such as:
  - ✓ Quality systems with particular reference to legal metrology requirements
  - ✓ Use of minimum principle
  - ✓ European standards, if any
  - ✓ OIML recommendations, if any
  - ✓ Administrative guidance

- Ü Guidance should be developed to reflect the specific situation of importers.

## 17. Innovation and tolerances

From industry there were two comments:

- For peat the tolerances in EN 12580 are more lenient and making them much stricter would require large overfill due also to desiccation
- In cement currently applied tolerances are more lenient and checking is per total truckload

The views of authorities are that:

- Tolerances should remain as they are, i.e. in line with international standards.
- If separate tolerances are needed, they should be specified for minimum packing and catchweighing, see headings 9 and 10 above.
- Suitable measuring instruments conforming to the Measuring Instruments Directive<sup>33</sup> could be recognised as giving a presumption of conformity; in-service checks and tolerances would need to be harmonised.

- ü Current tolerances in force up to 10kg/l in the EU are coherent with international standards.

## **18. Total harmonisation and e-marking**

There is strong support for making the EC harmonisation total.

- ü The means by which this could be done are either by making the EC law total (which would require a proposal by the Commission or, alternatively, Member States could phase out all parallel national legislation that differs from the current EC directives).

Respondents pointed out that if the current EC optional harmonisation becomes total, it will mean that the e-mark, which now distinguishes EC from national rules, will not have a function and can disappear. Once national rules have been retracted, the e-mark would not have function, other than an indication of conformity. If it should be phased out by means of a proposal, the transition period should be sufficient to allow existing products to be sold, e.g. 5 years.

- ü It would seem that the e-mark can indeed disappear if no alternative national procedures exist and that no other marking is needed to indicate compliance with laws that are harmonised by default of different national legislation. Without a proposal to change the current directives, the e-mark will continue to exist.

## **19. Other directives**

Respondents welcomed that where other directives state a quantity requirement an interpretative document by the Commission services should indicate the interpretation of such definitions in view of the changes suggested above.

- ü Guidance on other directives could be developed..

## **20. Cost and Benefits of alternatives**

A number of respondents from industry pointed out that the current system of manufacturer declaration cum enforcement at the packer's premises should not be replaced by a new layer of third party control. They insist that any third party control should be optional and only the choice of the packer, not the national authorities.

- ü Competitiveness should be maintained.

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<sup>33</sup> Directive [2004/22/EC](#), notably the instruments defined under Annex MI-006

## Conclusion

The Public Consultation has confirmed broad support for the existing legislation. No major issues have emerged that cannot be treated by guidance based on the current legislation. Member States would have it in their own hands to simplify by withdrawing any legislation that is parallel with EC rules and this would lead to de facto total harmonisation as advised by the SLIM team. Expanding the scope as advised by the SLIM team would still fall short of international standards, while little evidence was provided indicating that there are many products of over 10kg/l that require such harmonisation. Definitions that need to be clarified can be taken care of by means of guidance and drained weight can also be harmonised on the basis of tolerances in the current legal provisions.

- Ü The Commission services will in first instance proceed with stakeholders and authorities on an interpretative document which can serve as a basis for further guidance to be coordinated with stakeholders.
- Ü The public consultation has brought to light the few subjects which could be the subject of regulatory change:
  - ✓ making the current EC rules total,
  - ✓ eliminating the e-mark,
  - ✓ including catchweighing
  - ✓ semi-solids to be sold in (milli)litres
- Ü However, there is currently insufficient justification to proceed with a proposal for a change to the current legislation.

## **Annex 1: Interactive Policy Making Survey (IPM)**

### **General Statistics**

#### **Respondents**

Overall, 453 questionnaires were answered. Replies to the survey came from most EU countries, but in particular from Germany (18%), Belgium (12%), and the United Kingdom (9%). Of the respondents, 382 (84%) were consumers, 43 (10%) were producers and only 2 were retailers. There were 26 returns from organisations: 8 consumer organisations and 7 business federations as well as 11 from public authorities, 6 of which were in Germany and the other 5 in Belgium, Greece and the UK.

The purpose of the survey was to gather information on respondents' preferences and to see whether the answers would give cause to justify further research in the case of massive support for alternatives to the current legislation

#### **Evaluation of the Questionnaire**

The rate of response was high, given that all questions were optional and at least 98% of the respondents filled in an answer. On most questions the 'do not know' rate was low (below 5% per question)<sup>34</sup>. On the basis of these two criteria, the understanding of most of the questions by the respondents would seem to have been high.

### **Details of Findings**

#### **Consumers**

Of the responding consumers 369 were living in the EEA and 40% were females<sup>35</sup>, 11% were younger than 25 and a similar percentage were over 55 years of age. Where the answers differ according to age or gender this will be indicated in the following.

#### **Labelling of the quantity contained in prepackages**

Over two thirds of the respondents will read the quantity the pack contains before buying.

A majority of the consumers (55%) is of the opinion that it is sufficient to have the quantity indication somewhere on the package as is currently the rule. Notably, this is the opinion of two thirds of the respondents younger than 25. However, 50% of the over-55-years want the quantity to be indicated on the front of the package and this is also the opinion of 60% of the consumer organisations and 70% of the public authorities.

As regards the size of the quantity indication, a majority of consumers (52%) thinks it is currently written large enough. This view is also held by 80% of the public

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<sup>34</sup> In the case of a high fill out rate (in this instance 98%), the non-response rate probably indicates the respondent not understanding the question.

<sup>35</sup> This finding contrasts with the statistically representative Eurobarometer survey 113 that in 75% of all cases women were responsible for household shopping.



authorities. However, the majority of females (52%) disagree as do 62% of the consumer organisations.

The question on the current indication of certain semi-solids such as ice cream and toothpaste in (milli)litres received a substantial 16% don't-know replies. Most answers (46%) were to keep these indications as they currently are.

Most consumers welcome alternatives for quantity indications, such as:

- matches and nails in numbers (84%)
- Paint in painted area (67%)
- Textiles in square meters (66%)
- Compost in cubic meters (62%)
- Detergents in numbers of washes (53%)

The following conclusion can be drawn from this survey regarding labelling:

- Consumers look at quantity indications.
- Consumers want to stick to the current rule of a quantity indication somewhere on the pack, but this contested by the elderly, consumer organisations and public authorities who want it always on the front.
- Consumers consider the quantity indication to be large enough, but this is contested by females and consumer organisations.
- Consumers welcome alternative indications.

### **Metrological requirements for prepackages**

As regards desiccating products, such as cheese and soap, a majority (50%) wants the quantity to be correct on the sell-by date and this opinion is supported by 75% of the consumer organisations. However, 55% of consumers under 25 years disagree as do public administrations (55%).

When frozen products are glazed with water, a large majority (87%) is of the opinion that the content indication should not include the glaze.

As regards the indication of content of both constituting components of a product the order of priorities of those in favour is as follows:

- Fruit parts in juice (77%)
- Peas in water (70%)
- Anchovies in brine (55%)
- Orange juice with pulp (34%)
- Poire Williams – the spirits drink (30%)

The conclusion could be that such indications are particularly welcome for the first three products.

A large majority (70%) does not consider it necessary to indicate slack capacity and surplus air against crushing, e.g. of potato crisps, cornflakes and biscuits.

The following conclusion can be drawn from this survey regarding metrological requirements:

- Consumers want desiccating products to maintain their contents until the sell-by-date, but consumers under 25 years and public administrations disagree.
- Consumers want indication on frozen products to exclude the added water.

- Consumers want the quantity of each component indicated in the case of Fruit parts in juice, Peas in water and Anchovies in brine.
- Consumers do not require slack fill/capacity to be indicated.

## Producers

Of the 43 producers who responded, 39 were active in prepackaging. Small, medium and large enterprises each account for about a third and differences in their answers will be highlighted in the following. Also any differing opinions by the 6 trade federations and 11 public authorities (half of which from Germany) will be mentioned.

A very large majority of producers (90%) want to maintain conformity control at the packer's premises.

A large majority (70%) wants to shift responsibility for compliance to the person placing the product on the market. Currently packers have the responsibility and a shift would not mean less on-site testing by authorities at their premises.

A very large majority (90%) is in favour of harmonised procedures in the Community, i.e. the procedures recognised by the competent authorities<sup>36</sup> should be the same.

As regards having a choice of methods for controlling packers, opinions are favourable: the majority of 54% of small enterprises, 46% for medium enterprises (15% don't-knows) to 67% in large firms. Public authorities disagree by a majority of 46% (9% don't-knows).

Mention on the label of the person placing the product on the market is viewed favourably by large (67%) and medium sized firms (54%), but not by small firms where there is a tie at 45%. Public authorities would be in favour by 55%.

Whether the current test on packers is up to date gets a "don't-know" from 33-45%. Answers are too diverse to draw a conclusion.

As regard costs and benefits of harmonisation the views are varied:

- With a 10% non-response, small enterprises mainly see costs and benefits (36%) while 27% see only costs and another 27% only benefits. The motivation for 'only costs' was given by one firm as meaning that the new legislation will lead to more paperwork and require to take on more staff.
- Medium sized firms are most upbeat with a 70% majority expecting only benefits and the remainder a mix of costs and benefits. Costs would be due to redesigning packs, while benefits would occur from more honest competition.
- Most large firms expect both costs and benefits (73%) while the remainder reckons it will give only benefits.

The views of the majority of producers in the survey are the following:

- Maintain conformity control at producer's premises.
- Shift responsibility for compliance to the person placing the product on the market.

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<sup>36</sup> Mentioned in Annex 1.4§5 in both 75/106 and 76/211

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- Harmonise procedures in the Community.
  - Give a choice of methods for controlling packers.
  - Mention on the label the person placing the product on the market.
  - Medium sizes firms expect benefits, small and large enterprises both costs and benefits while the fear of only costs exists in some small enterprises.

## **Retailers**

Only 2 retailers responded and they agree on maintaining conformity control at packer's premises, but have differing views on shifting compliance to the person placing the product on the market and mention of that person on the label.

## **Annex 2: Organisations contributing comments**

### **Consumers**

- Federal Chamber for Workers and Employees (AT)
- Kammer für Arbeiter und Angestellten für Nieder Österreich (AT)
- Test Achat (BE)
- Czech consumer organisation (CZ)
- Stiftung Warentest (DE)
- Patra's (EL)
- KEPKA (EL))
- Royal National Institute of the Blind (UK)

### **Industry**

- European Brands Association (AIM)
- Comité Européen des Entreprises Vins (CEEV)
- Brewers of Europe
- Fédération International des Vins et Spiritueux (FIVS)
- Fédération Française des Spiritueux
- UK Food and Drink Federation
- The European Cosmetic, Toiletry and Perfumery Association (COLIPA)
- European Peat and Growing Media Association (EPAGMA)
- Gin and Vodka Association of Great Britain
- Association Internationale de la Savonnerie, de la Détergence et des Produits d'Entretien (A.I.S.E)
- British Aerosol Manufacturers' Association (BAMA)
- The Cosmetics, Toiletry & Perfumery Association Ltd
- British Cement Organisation
- Pernod
- Syndicat des Exportateurs du Cognac
- The European Spirits Organisation (CEPS)
- UK Cleaning Products Industry Association (UKCPI)
- Fédération Européenne des Associations de Torrefacteurs de Café (AFCASOLE/EUCA)
- Koninklijk Verbond van Koffiebranders
- Confederación Española de Detallistas de la Carne (CEDECARNE)
- E-Business Austria (VIW)
- British Beekeepers' Association (BBKA)
- European Pet Food Industry Federation (FEDIAF)
- Condeferation of the food and drink industries of the EU (CIAA)

### **Authorities**

- The European Cooperation in Legal Metrology (WELMEC WG 6)
- Czech Metrology Institute (CZ)
- Sächsisches Landesamt für Mess- und Eichwesen (DE)
- Landesamt für das Mess- und Eichwesen Berlin (DE)

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- Bayerisches Landesamt für Mess- und Gewicht (DE)
  - Eichamt Bad Kreuznach (DE)
  - Mess- und Eichwesen Niedersachsen (DE)
  - Mess- und Eichwesen Baden-Württemberg (DE)
  - NMI Certin B.V. (NL)
  - Styrelsen för ackreditering och teknisk kontroll (SWEDAC) (SW)
  - SP Swedish National Testing and Research Institute (SW)
  - West Sussex County Council Trading Standards Service (UK)
  - London Trading Standards Authorities (UK)
  - UK Trading Standards Institute (UK)