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**Proposal for a Directive of the European Parliament and of the Council
laying down rules on nominal quantities for pre-packed products, repealing Council
Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC**

Extended Impact Assessment

{COM(2004)708 final}

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1. ISSUE THAT THE PROPOSAL TACKLES

In the 1960s different national rules on nominal quantities of pre-packaged products (pack/bottle sizes) were a major barrier for free movement of goods between the Member States.

There was then a need to harmonise these sizes. At the same time, there was a concern not to impose such new Community rules on companies that worked only on the national market and did not intend to export to other Member States. Harmonizing regulation was therefore of an “optional nature”: Member States adopted the Community rules, but were allowed to maintain existing national rules for the national market. Only products conforming to the Community rules would benefit from free circulation.

However, for some products (e.g. wine, spirits....) total harmonisation was introduced: Community sizes became mandatory for all operators in the sense of being exclusive, i.e. all national sizes were abolished.

The first Community legislation for ranges of sizes for pre-packaged products dates from 1975. It includes regulation for both metrological requirements and ranges of sizes for liquids. The legislation is summarised in the table below.

Table 1. - Summary of legislation

	Liquids for human consumption	Other liquids and non liquids
Metrological requirements	Directive 75/106 Annexes 1 & 2	Directive 76/211 ¹
Ranges of sizes /quantities	Directive 75/106 ² Annex 3	Directive 80/232 ³

Twenty years later, in the framework of the SLIM-IV exercise (Simpler Legislation for the Internal Market), a team, comprising members designated by Member States and representatives of stakeholders identified by the Commission, advised on pack sizes legislation⁴:

“given their complexity (some 40 targeted products, complexity of certain ranges of values, etc.) the evolution of consumer patterns and preferences over the interim period and reservation as to the appropriateness of maintaining this type of legislation. Moreover, successive amendments of the Directives and an

¹ Council Directive 76/211/EEC 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 pre-packaged products

² 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 pre-packaged liquids

³ Council Directive 80/232/EEC of 15 January 1980 on the approximation of the laws of the Member States relating to the ranges of nominal quantities and nominal capacities permitted for certain pre-packaged products

⁴ COM(2000)56 final, pp 9-11 and 21-22

enlargement of the scope of the 1975 pre-packaging directive have made the application of this body of legislation problematic.....

The application of the Directives has proved to be difficult, notably as a result of the variety of rules and practices applying to ranges: certain ranges were made mandatory (e.g. wine) whilst others remained optional. Moreover, Member States retained the right to fix ranges at national level because of the optional character of Community rules. The variety of rules led to the compartmentalisation into different national market within the European Community.

In addition, the arrival of new packaging formats and new products and their classification in the existing ranges system tended to exacerbate an already confused situation.”

In its answer on the SLIM conclusions, the Commission indicated that it would

“carefully review the various recommendations in the team’s report and, where appropriate, propose the necessary measures in close cooperation with Member States and other concerned parties.”

This need for review was subsequently reinforced when the European Court ruled in the *Cidrerie-Ruwet* case that ‘Cassis de Dijon jurisprudence’ also applies to national pack sizes, i.e. Member States must accept on their market products legally produced and marketed in another Member State⁵ unless there are overriding requirements of a public nature. The Court suggested that this would hardly be the case for pack sizes.

The current document concerns only the legislation of “ranges of sizes/quantities” and not the metrological requirements, which will be the subject of a later proposal.

2. MAIN OBJECTIVES THAT THE PROPOSAL IS EXPECTED TO REACH

In line with enterprise policy the proposal will promote competitiveness because it encourages entrepreneurship, product and process innovation and facilitates access to markets⁶. It will take away potential obstacles to competitiveness on the Internal Market and will benefit of small and medium sized enterprises. There have been huge changes in packaging over the past decades: households have decreased in numbers, consumption of individual portions has increased and more wealth and consumer sophistication has led to an enormous variety of packages and products demanded. In the mean time, super- and hypermarkets have grown to be the most important outlets to consumers in most Member States.

Elements that used to be covered by the prepackaged sizes legislation have now been consolidated in new legal instruments of consumer protection⁷. This consumer protection

⁵ Case C-3/99, 12 October 2000, *Cidrerie Ruwet SA v Cidre Stassen SA and HP Bulmer Ltd.*

⁶ A. Peterse, L. Nijhuis, A. Palmigiano "Regulation and Innovation in the area of pre-packaging sizes", F. Leone (ed.), EC DG JRC-IPTS Technical Report Series, Seville, 2002, pp 55-67

⁷ The main instruments of consumer protection are:

Directive 2000/13 on labelling and presentation of foodstuffs (Art 2),

Directive 84/450/EEC on misleading advertising (amended by Directive 97/55/EC to include provisions on comparative advertising), will be amended by COM(2003)356 final, of 18.6.2003: Proposal for a

legislation prohibits unfair business-to-consumer practices and develops a coherent and sufficient system of information to consumers by means of labelling. The indication of prices per kilo or litre allows consumers to quickly compare products packed in different sizes and is in line with the approach of the European Court of Justice, which considers the “average consumer, reasonably well informed and reasonably observant and circumspect” as a reference⁸. The proposal should not interfere with the high level of current consumer protection legislation.

Current environmental regulation has no impact on sizes, nor do sizes have an impact on environmental regulation. Existing environmental regulation should remain applicable and the proposal should not impede the full and proper implementation of environmental law, notably the prevention of waste requiring the minimisation of packaging.⁹

3. MAIN POLICY OPTIONS AVAILABLE TO REACH THE OBJECTIVE

In the light of the current situation and existing regulatory framework, there potentially five policy options available to reach the objectives.

Sizes fixed at the national level were the situation as it existed before the Cassis de Dijon case law clarified the situation¹⁰. As a general rule, Member States must accept sizes that are legally marketed in any Member State.

Sizes fixed at the Community level currently exist for some products (wine, spirits). The range does not contain too many sizes but nevertheless contain sufficient sizes so as not to hamper demand. Existing ranges contain about 15 sizes.

Limited range of sizes fixed at the Community level contains only the most sold sizes and excludes any other sizes within this range. Outside the range sizes would be free (see the table 1 below for a graphic presentation).

Free sizes allow producers to pack in any size in function of demand without interference from any authority. This option would allow current practices based on national sizes to continue.

Voluntary standardisation in the context of free sizes allows stakeholders to standardise package sizes where it is deemed useful.

Directive of the EP and of the Council concerning unfair business-to-consumer commercial practices in the Internal Market,

⁸ Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers (prices per liter/kilogram): unit prices, which are mandatory for all products in supermarkets. Case C-220/98 Estée Lauder Cosmetics v Lancaster Group [2000] ECR I-117, § 30, referred to in Cidrerie-Ruwet case C-3/99.

⁹ Annex 2 of Directive 94/62/EC on Packaging and Packaging Waste

¹⁰ Case C-3/99, 12 October 2000, Cidrerie Ruwet SA v Cidre Stassen SA and HP Bulmer Ltd.

Table 1. - Limited fixed sizes: only the size of 75cl would be allowed in the range between 50cl to 1L



4. IMPACTS EXPECTED FROM THE DIFFERENT OPTIONS IDENTIFIED

Economic criteria

1. Intra-EU trade is not hampered in any of the alternatives established at the Community level. Fixed sizes established at the national level would hinder trade on the EU market. National sizes therefore discriminate domestic packers, who may only pack in the national sizes while facing competition on the home market from different sizes in which they are not allowed to pack
2. Extra EU trade is hindered if sizes are established at the national level, notably disadvantaging importers who would need to adapt their sizes to different markets. National sizes will shackle producers and reduce their potential to compete on third markets. To a much lesser degree, this problem also exists for (limited) fixed sizes if packers need to invest extra to pack sizes sold on third markets that differ from EU sizes. In the case of free sizes, there is freedom to produce with least costs, both for home consumption and for exports.
3. Innovation on sizes can be achieved under all alternatives with the exception of fixed sizes. Although generalisation is difficult, case studies indicate that most innovation is to be expected under free sizes¹¹. Voluntary standardisation could help to promote new sizes.
4. Economies of scale for SMEs is best assured under (limited) fixed sizes, especially if, as is currently the case, only a few sizes account for most sales and the public is happy with this. Voluntary standardisation could also be a means available to

¹¹ A. Peterse, L. Nijhuis, A. Palmigiano "Regulation and Innovation in the area of pre-packaging sizes", F. Leone (ed.), EC DG JRC-IPTS Technical Report Series, Seville, 2002, pp 55-67

stakeholders for accommodating the needs of retailers optimising shelf space, consumers demanding choice and SME's achieving scale economies.

5. New entrants are probably best served where sizes are free as this gives an easy way of distinguishing a new product. Therefore, new entrants may have more difficulty where sizes are fixed.
6. Collusion¹², in its tacit form, such as feeling pressure to follow the market leader, may be more probable where markets are more transparent for large players so that 'loyal competition' can be forced. Fixed sizes make markets more transparent.

Social criteria

7. Better choice for consumers occurs where sizes are free, because producers can immediately respond to changes in consumer tastes and demand. Fixed sizes reduce choice to the minimum, because a change of law is required before a size can be adapted. In the case of national sizes, there already exists much variety – sizes from elsewhere in the EU increase the choice.
8. New instruments ensure that liberalisation does not dismantle consumer protection, e.g. the relevance of unit pricing increases where there is more choice. If competing products are on offer only in one size, as often happens in the case of fixed sizes, the unit price will not offer any information.
9. It is contended by some that consumers with reduced eyesight may be better catered for when there is less choice of sizes. If this is the case, the assessment should be the inverse of assessment for more choice. It is still unclear, if sizes are fixed, how a consumer with reduced eyesight can distinguish between various brands and their prices? Voluntary standardisation could address the needs of these consumers in a more comprehensive way.
10. Portions adapted to the needs of people with diabetes would require free sizes. Diabetes is on the rise and affects over 5% of the population, who must inject a fixed dose of insulin for each quantity of carbohydrates consumed. Free sizes would allow packing in sizes that are easy to use by people with diabetes¹³.

Environment criteria

11. The aims of the Packaging / Packaging Waste directive (PPW) must be achieved, regardless of whether sizes are regulated or not. In order to reuse packaging material

¹² Collusion refers to the coordination of firms' competitive behaviour. The likely result of such coordination is that prices rise, output is restricted and the profits of the colluding companies are higher than they would otherwise be. Collusive behaviour does not always rely on the existence of explicit agreements between firms. Collusive behaviour can also result from situations where firms act individually but — in recognition of their interdependence with competitors — jointly exercise market power with the other colluding competitors. This is normally described as 'tacit collusion'.
Source: 'Glossary of terms used in EU competition policy':

http://europa.eu.int/comm/competition/publications/glossary_en.pdf

¹³ The following products contain carbohydrates: sugar, milk and milk products, cheese, bread, rice, cereals, pasta, fruit juices, sweet beverages, fruits and vegetables that are dried or frozen, preserves and fruit cocktails and fats.

such as glass, size is only one prerequisite next to the construction, material and dimension of the package and the organisation of the reuse chain.

12. Light glass is said by industry to reduce transport costs and can only be efficiently produced if economies of scale can be achieved. The case for lightweight glass coincides with economies of scale, even if sizes would be free. Voluntary standardisation could possibly have a positive effect, if light glass could be the agreed packaging material.

The assessment can be made per alternative using each of the assessment criteria in line with the discussion of the criteria per alternative given above. Where the alternative is deemed to have a positive effect on the criterion, a plus (+) or a double plus is allotted (++). Where there is no effect a zero is given and where the alternative is deemed to have a negative effect on the criterion, a minus (-) or a double minus (--) is allotted. This is done per alternative for each criterion in the table below.

Table 2: Overall assessment of policy alternatives on the basis of assessment criteria

	Policy Alternative :	National	Fixed	Limited	Free	Voluntary
	Assessment criterion	Sizes	Sizes	Fixed sizes	Sizes	Standardisation
	<i>Economic criteria</i>					
1)	intra-EC	-	0	0	0	0
2)	extra-EC	-	-	-	++	0
3)	innovation on size	+	0	+	++	+
4)	economies of scale for SME	0	++	+	0	+
5)	new entrants	0	0	0	+	0
6)	possible collusion	--	--	-	0	0
	<i>Social criteria</i>					
7)	more choice	+	0	+	++	+
8)	reliance on unit pricing	++	+	+	++	+
9)	consumers with reduced eyesight	-	0	0	--	++
10)	needs of people with diabetes	--	--	0	+	+
	<i>Environmental criteria</i>					
11)	achieve the aims of PPW directive	0	0	0	0	0
12)	light glass reduces transport	0	0	0	0	+

Source: Assessment by Commission services based on feedback from the public consultation

Overall, the policies of free sizes and voluntary harmonisation would appear to be more favourable than fixing sizes, be it at the national level or at the EU level. Limited fixing of sizes would be in the middle.

Sectors requesting fixed sizes¹⁴

Whilst the free sizes policy alternative may be the best in terms of the aims, a number of sectors indicated that free sizes may nonetheless have large cost implications. The sectors are represented by European federations which may be deemed representative for the sector in EU-15. Only the EU federation for salt does not represent SMEs. The sectors requesting total harmonisation of fixed sizes at the Community level can be described as follows:

Table 3. - Assessment of the sector-specific characteristics

	Growth 1980-2000	Increase of sales price 1996 - 2002	Concentration in Member States	Employment in Small and Medium sized Enterprises	Flexibility of packaging material	Flexibility of packing	Amortisation packaging equipment (years)
Wine	Low	Low	Low	High	Low	Low	20
Spirits	Low	Low	Medium	Medium	Low	Low	20
Roasted Coffee	Low	Low	High	High	High	Low	20
Soluble Coffee	Low	Low	High	High	Low	Low	20
Sugar	Negative	Low	High	High	High	Low	20
Salt	Low	N.A	High	N.A.	High	Low	20
Flour	Low	N.A	Medium	High	High	Low	20
Metal Cans	Low	N.A	High	High	Medium	Low	20

Source: Assessment by Commission services

The table above shows that all sectors are low growth and have price rises that are lower than average in food retailing. They have major employment in small and medium sized enterprises (SMEs). Further, firms are not flexible on packaging different sizes and the necessary additional investment to cope with free sizes would, in the short term, have serious consequences for profitability and employment in small and medium sized enterprises. Sector concentration is low in wine, medium in spirits and flour and high in the other sectors.

¹⁴ More information on the detail of this section can be found in:
Pack sizes in the EU - Report on the extended impact assessment of sectors asking for fixed sizes

Table 4. - Costs of changing from fixed sizes to free sizes (m€)

	Wine	Spirits	Coffee	Sugar	Salt	Flour	Cans	Total
<i>Cost in million € per sector of EU-15 of 10 new sizes¹⁵ assuming 33% of small firms investing¹⁶, annual variable costs per size per firm of €35,000¹⁷, one-off investment per size of €75,000¹⁸ and 20 years of machine life.</i>								
<i>Baseline scenario</i>	544	385	314	117	16	227	159	1,761
<i>Costs of above scenario per firm-type as percentage of sales price of prepackaged products per sector</i>								
<i>small firms</i>	11%	17%	15%	12%	1%	11%	3%	10%
<i>medium sized firms</i>	1.9%	1.3%	0.5%	5.3%	0.6%	1.1%	0.4%	1.4%
<i>large firms</i>	0.2%	0.1%	0.0%	0.5%	0.1%	0.1%	0.0%	0.2%
<i>Average</i>	4%	3%	4%	3%	1%	4%	1%	3%
<i>Sensitivity analysis: extra costs in million of € per sector of EU-15</i>								
3 extra sizes	+ 163	+ 115	+ 94	+ 35	+ 16	+ 227	+ 48	+ 698
15% more SE's investing	+ 436	+ 146	+ 135	+ 6	+ 6	+ 91	+ 61	+ 881
10 years less machine life	+ 28	+ 20	+ 16	+ 39	+ 1	+ 12	+ 8	+ 123
+ 5000€ variable costs per size	+ 70	+ 49	+ 40	+ 8	+ 2	+ 29	+ 20	+ 219

Source: Assessment by Commission services based on estimates by individual producers

According to the sectors, liberalising sizes will lead to supermarkets requiring more sizes to be delivered. A supermarket would especially be interested in having sizes, which are slightly smaller than the most currently sold sizes. For example: a 73cl or 71cl bottle instead of a 75cl bottle, a 98cl or a 95cl bottle instead of a one litre bottle as well as sizes above the currently fixed sizes in order to offer 10% free, which would give sizes such as 82.5cl and 1.1L. However, supermarkets would be limited in their choice by their turnover targets per meter of shelf space and would not want run the risk of adverse publicity by being seen by consumers as deceiving them. It would seem that a working hypothesis of 10 new sizes would not be unreasonable. This may be on the high side for low cost bulk products, such as flour and salt, where it is more likely that only 3 new sizes would occur.

A second question is to what extent small firms will follow suit and produce more sizes. The existing sizes will remain a standard on the market and will suffice for many who are basically producers for the local economy. A working hypothesis could be that one third of small enterprises will invest in more flexible production whereas all medium sized firms and

¹⁵ Salt and flour: 3 new sizes (instead of 10)

¹⁶ Wine: 15% of small firms investing (in stead of 33%).

¹⁷ Sugar: annual variable costs per size per firm €75,000 (instead of €35,000)

¹⁸ Sugar: one-off investment per size of €500,000 (instead of €75,000)

large firms will invest. In wine, where 2/3 of small firms already outsource bottling, it is assumed that half of all bottlers will invest (15%).

As illustrated in Table 4 above, the costs of liberalising sizes in the sectors would, on average, amount to 3% of the sales price. Significant costs would be incurred by small enterprises (over 10%), whilst medium sized firms could face extra costs of between 1% and 2% in wine, spirits, coffee and 5% in sugar. Large firms would incur costs of not more than 0.5% of the sales price, which is explained by their possibilities to better achieve economies of scale.

Table 5. - Estimates of sales of sizes currently most sold in packs to consumers

	Fixed sizes	N° of sizes	Sales covered
Wine	ml: 250 - 375 – 500 – 750 - 1000	5	90%
Champagne	ml: 200 - 375 –750 - 1500	4	90%
Spirits	ml: 200 - 350 – 500 – 700 - 1000	5	90%
Roasted coffee	g: 125 – 250 – 400 -500	4	90%
Soluble coffee	g: 50 - 100 – 200 – 300	4	90%
Sugar	g: 250 500-750-1000-1500 2000 2500	7	98%
Salt	g: 250 - 500 – 700 - 1000	4	90%
Flour	g: 1000 - 1500	2	50%
Metal Cans	N.A.	N.A	

Source: Estimates by Commission services

As the above table indicates, most sales to consumers in these sectors are limited to a few sizes. Fixing all sizes could involve more changes in future (micro-regulation) than fixing only the sizes, that are currently most sold. Fixing only the sizes mainly sold to consumers would suffice to address the buyer pressure mentioned above, because there is no mass consumer market for any other sizes. The policy alternative of limiting the fixed sizes to a range would reduce regulation, while solving the risk of extra cost to these sectors involved with moving to free sizes.

Direct costs to consumers of maintaining fixed sizes in these sectors would seem to be negligible and the same applies to government and retailers. The higher costs to producers in these sectors due to a shift to free sizes should, in principle, lead to more employment in production. Arithmetically an increase in consumer prices by 3% of prepackaged products in these sectors could lead to an increase of employment by 5000¹⁹. However, demand might

¹⁹ The cost of the switch to free sizes (€1,7 bn) as a percentage of total production of the sectors (€103bn) gives 1.7% and this percentage applied to the total employment in the sectors of 307,000 gives 5,000 new jobs.

shift to more competitive imports, so that new employment could be neutralized by losing existing employment. Also export demand might fall due to the price rise, again leading to lower profitability and further employment losses. Due to these uncertainties no employment gains have been included.

International trade and competitiveness

Honouring the requests made for fixed sizes would make the EU into the economy most active in regulating sizes. Other major economies also regulate some sizes. For wine the 75cl is de facto international standard, while main trading partners also have fixed their own sizes for spirits.

Table 6. - Legislation on mandatory sizes of pre-packaging in US and Canada

Type of product	N° of sizes up to 10L/kg	Mandatory sizes
Canada		
Wine	12	ml: 50, 100, 200, 250 375, 500, 750, 1000, 1500, 2000, 3000, 4000
Peanut Butter	7	g: 250, 375, 500, 750, 1000, 1500, 2000
Glucose and refined sugar syrup	16+	ml: 125, 250, 375, 500, 750, 1000, 1500, 2000, 3000,4000, 5000, 6000, 7000, 8000, 9000, 10000+ multiples of a litre
United States		
Distilled spirits in containers other than cans	7	ml: 50, 100, 200, 375, 750, 1000, 1750
Distilled spirits in metal containers	4	ml: 50, 100, 200, 355
Wine	16+	ml: 50 , 100 , 187, 375, 500, 750, 1000, 1500, 3000, 4000, 5000, 6000, 7000, 8000, 9000, 10000 + multiples of a litre

Source: F. Leone, A. Peterse, A. Palmigiano - [The impact of EU regulation on innovation of European industry: pre-packaging sizes and the influence on innovation](#), JRC/IPTS, Sevilla 2002

Foreign spirits producers insist that fixed sizes make it easier for them to access the EU market.

Table 7. - EU-15 trade flows in 2000 per sector (€ mln)

	IMPORTS					EXPORTS				
	Intra-EU	Extra-EU	of which:			Intra-EU	Extra-EU	of which:		
			EU	NAFTA	Rest			EU	NAFTA	Rest
Wine	6184	1860	192	344	1323	6505	4190	798	2184	1208
Spirits	3580	792	64	307	421	3536	5079	498	2092	2489
Gr. Coffee	829	30	19	4	8	874	453	160	223	70
Sol. Coffee	573	193	38	5	150	573	290	194	10	86
Sugar	1499	1198	62	63	1073	1768	1406	283	4	1118
Salt										
Flour	2527	593	95	166	333	2662	1116	305	39	771
Cans	2350	325	211	57	56	2542	848	362	117	369

Source : Eurostat Comext2

5. MONITORING THE RESULTS AND IMPACTS OF THE PROPOSAL AFTER IMPLEMENTATION

To the extent that monitoring of the results is required, this would apply only to the sectors with fixed sizes. For these sectors the Commission services would monitor developments and assess data, concerning the costs and benefits at sector level in order to see whether the exception of fixed EC sizes is still needed. It would seem that stakeholders, notably industry and consumers, are best placed to provide input required for the evaluation and ex post monitoring criteria.

Criteria to be quantified for evaluation and ex post monitoring could include:

1. Sales per size. The policy should extend only to sizes that are regularly traded.
2. Sizes produced by SMEs. If policy on sizes is oriented to protecting the interests of SMEs, it is necessary to know to what extent they are still being served.
3. Sector concentration. Given the potential for collusion, sector concentration needs monitoring.
4. Sizes available at point of sale. Consumer choice can be limited at points of sales, which could be an indication of seller-cum-producer power.
5. Developments on the market. These could be an indicator of innovation in the sector or changes of consumers' tastes.

6. Price convergence. Competition should cause prices to even out and not be too divergent between Member States (excluding taxes).
7. Increased trade. Where the Internal Market functions well, there should be an increase in trade as producers specialise.

6. STAKEHOLDER CONSULTATION

Between 8 November 2002 and 31 January 2003, the Enterprise DG held a public Internet consultation in 11 languages with consumers, producers and retailers, following the Commission's consultation standards²⁰. The parties were asked to give their views on maintaining existing pre-packaging legislation on fixed sizes or allowing free pack sizes. A comprehensive Commission staff working paper set out the key issues²¹ and a report summarised the main findings of the consultation²².

A Eurobarometer survey in October 2001²³ asked consumers in the EU about their general experience with packaged and bottled products sold in shops and supermarkets. The survey showed that most consumers welcome standard sizes, but also want more choice. Where sizes are standardised, consumers would like to see a sufficient range of options available in stores to enable them to select the size they require.

Consumer organisations in the 25 Member States and the European consumer federations were asked for their views on the basis of the documents on the general impact assessment and the impacts on the sectors asking for exemptions. Eight organisations (from 6 Member States) responded and all but one, are in favour of free sizes in general and accept maintaining limited short ranges²⁴.

The UK's Royal National Institute for the Blind represents the interests of 2 million visually impaired persons in the UK. It is in favour of mandatory fixed sizes, because it gives transparency, which is especially relevant for the visually impaired, for whom labelling information is often inaccessible and who find it hard to read unit pricing information. It can accept the range of sizes to be limited to the most sold sizes in the sectors that are included in this proposal.

The interests of people with diabetes were represented on an individual basis. Diabetes is on the rise and affects over 5% of the population, a large number of whom must inject a fixed dose of insulin for each quantity of carbohydrates consumed. Free sizes allow adapting packaging to sizes that are easy to use by people with diabetes and in this proposal all sectors relevant to diabetes are left with free sizes²⁵.

The overall response by industry has been positive. Industry is in favour of free sizes, without any EU or national legislation, because it allows to quickly adapt sizes to new consumer

²⁰ COM(2002)704final, 11.12.2002

²¹ "Pack Sizes in the EU", Enterprise DG working paper, July 2002

²² Results of the Public Consultation on pack sizes, May 2003

²³ Gallup Europe: FLASH Eurobarometer N°113 "Les emballages et les ménages" (22-29/10/01)

²⁴ See Annex 2 of the "Report on the extended impact assessment of sectors asking for fixed sizes"

²⁵ The following products contain carbohydrates: milk and milk products, cheese, bread, rice, cereals, pasta, fruit juices, sweet beverages, fruits and vegetables that are dried or frozen, preserves and fruit cocktails and fats.

demands, to easily innovate and to reap full economies of scale on the Internal Market. Mandatory Community sizes reduce returns and force extra investments, because industry would need to change from their current practices. Where this proposal maintains fixed Community sizes, the relevant sectors have expressed full support.

Not all sectors have expressed a view (e.g. knitting yarns). Some sectors may not have been able to establish an EU-wide view, e.g. dairy products, in the absence of which agreement on harmonised sizes might be extremely difficult. Where current practices on the market provide satisfying results these can be maintained as, under the proposal, Member States are not allowed to restrict placing on the market for reasons related to sizes.

7. COMMISSION DRAFT PROPOSAL AND JUSTIFICATION

The impact assessment of policy alternatives has shown free sizes to be the most favourable option as it allows full competition²⁶ for industry and freedom of choice for consumers without compromising the environmental aims of the Community. Furthermore, it has become clear from the *Cidrerie-Ruwet*²⁷ ruling that national legislation increases confusion on the internal market, while fixed sizes limit the flexibility to adapt products to new consumer needs, which is the established market practice in most sectors. Deregulation is justified in the light of the increased transparency offered by Community consumer legislation requiring the indication of unit pricing and prohibiting misleading practices and advertising.

However, it also appeared that there might be sectors for which regulation on the basis of total harmonisation should be maintained. Fixed sizes may allow to offset disproportional buyer pressure from large distributors, like supermarkets, on small and medium sized enterprises and a sudden change to free sizes would cause industry to incur excessive costs, notably in sectors with structural low demand growth that are accustomed to fixed sizes. Mandatory ranges thus could be justified on this basis for the sectors where the Community regulator had already fixed harmonised mandatory sizes: i.e. wine, spirits, soluble coffee and white sugar. In these sectors it would suffice to fix by law a limited number of sizes which are most sold to consumers. Given more time these sectors may be assumed to be able to adapt their processes to more flexible production and it would seem that the lifetime of investments (20 years) should suffice as the period during which sizes remain fixed by law. In order not to bring this repeal into doubt and thereby create uncertainty in the minds of the investing firms no intermediate evaluation of the policy should be foreseen.

It seems hard to motivate extending total harmonised Community sizes to other sectors, such as:

- Ground coffee is a highly competitive sector and the packaging is flexible. There is already considerable concentration in this sector and competition should therefore in no way be inhibited.
- Brown/raw sugar and icing sugar are niche markets in which the legislator should not intervene.

²⁶ Many studies confirm the validity that competition leads to more growth and lower prices, see: http://europa.eu.int/comm/competition/proactive_competition_policy/evidence_box.pdf

²⁷ Case C-3/99, 12 October 2000, *Cidrerie Ruwet SA v Cidre Stassen SA and HP Bulmer Ltd.*

- Flour is mostly sold in large quantities to consumers and it does not seem that there is a major incentive for supermarkets to stunt with sizes.
- Salt is very dynamic as regards small artisan production and fixing sizes could inhibit entrepreneurial activity.
- Metal cans is governed in practice by a European standard which fixes the diameter of the base for round cans, while the height of the can is relatively easily varied and this allow packaging to be as economical as possible thereby contributing to the aims of the Community as regards packaging waste.

Weak evidence may draw in other sectors, including those that are not able to formulate a common view on fixed sizes at the Community level.

It should be kept in mind that the policy alternative of free sizes implies that current practices, heritage of national laws, can be continued even after these laws are repealed as the consequence of the Cidrerie-Ruwet considerations. Current practices would then reflect national tastes which in the absence of law become voluntary.

Table 8. - Total impacts table of the Commission's proposal

	Qualitative Description	Quantitative Description	Monetised Value
Economic Impacts			
Costs to Enterprises in sectors wanting free sizes	Wish to quickly adapt to new consumer needs	2 million firms continuously flexibilising production	Not monetised, internalised costs.
Costs to Enterprises in sectors wanting to keep limited fixed sizes with existing 'total harmonised' Community sizes	Maintain limited sizes for now, but need to adapt to flexible production after 20 years	11,000 firms in wine, spirits, soluble coffee and white sugar flexibilising after 20 years	€ 1,100 million annually after 20 years, but expected to be internalised
Costs to Enterprises in sectors wanting to keep limited fixed sizes without existing 'total harmonised' Community sizes	Need to adapt to flexible production	9,000 firms in ground coffee, salt, flour and ferrous metal cans flexibilising production	€ 700 million annually, but expected to be internalised.
Social Impacts			
Consumer benefits	Consumer choice fully satisfied	475 million consumers	Not monetised
Employment benefits	Potential of 2000 new jobs now and another 3000 after 20 years	9,000 firms (ground coffee, salt, flour and ferrous metal cans) and 11,000 firms in twenty years	€ 1,800 million annually, but expected to be internalised.
Environmental Impacts			
Packaging waste aims	Light glass in those sectors mainly packing in glass	Contingent with scale affects in wine, spirits and soluble coffee	Not monetised

The total impacts of the Commission proposal are indicated and monetized where possible in the above table. The costs of liberalisation of sizes to firms and the benefits in terms of potential employment may be quite large. However, it is not probable that in the current competitive market that these costs can be passed on the consumers, so it is improbable that they will indeed be incurred or that more employment will be achieved.