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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(73) 1731 Final

Brussels, 17 October 1973

PROPOSAL FOR A COUNCIL DIRECTIVE

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.

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM1. GENERAL

This Directive has been drawn up pursuant to Article 100 of the Treaty and in conjunction with the Council Directive of 26 July 1971 on the approximation of the laws of the Member States relating to common provisions for measuring instruments and methods of metrological control¹. The object of the Directive is to eliminate technical obstacles to intra-Community trade which currently exist in the case of prepackages made up by weight or by volume and containing products referred to in Article 4.

A comparative examination of the various laws and regulations on prepackages, as referred to in this Directive, has shown that the differences are not restricted to technical requirements concerning closeness with which actual and stated contents correspond, but also cover methods of metrological control to which these packages are subject prior to being placed on the market and used.

With regard to cross-frontiers trade, the result of this situation is that manufacturers and packagers are obliged to diversify their products in order to take account of the regulations in force in the Member State in which such prepackaged products are to be used, and to comply with repeated checks, carried out by different procedures.

Given the fact that the current national laws are justified by a legitimate concern to protect the consumer and user, the harmonization of these laws would appear to be the only way of removing difficulties arising out of divergencies between them and of creating the conditions necessary for the establishment of the Common Market.

But this proposal for a Directive, which follows on logically from two other proposals for Directives already sent to the Council, (one relating to prepackages containing beverages and the other to bottles used as measuring containers²), harmonizes the provisions relating to prepackages only as regards the quantity in relation to the tolerances, and does not settle problems regarding the shape of the packages, the nature of the materials used and ranges (series) of weights and volumes; these will be covered, if necessary, by future provisions.

(1) DJ No L 202, 6 September, 1971 (2) OJ No C 50, 19 May, 1972.

Frequent consultations were held with representatives both of the various trade federations concerned, and with consumers during the preparation of this proposal for a directive, in which experts appointed by the governments took an active part.

The method of harmonization selected is the so-called optional approach, as embodied, also, in the majority of specific directives concerning measuring instruments. The optional approach to harmonization is allowed, as is total harmonization, by the Council Directive on common provisions for measuring instruments and methods of metrological control.

Under optional harmonization the Member States are obliged to accept prepackages satisfying the requirements of this Directive in the same way as those complying with the provisions in force in their territory, without, however, having to rescind the latter.

II. COMMENTS ON THE PROPOSAL FOR A DIRECTIVE

2.1 Purpose

The Directive does not set out to settle, as a whole and completely, the problem of prepackages:

- a) out of all prepackaged products, the Directive concerns only the consumer goods listed in Annex III;
- b) it concerns only those of the latter which, in accordance with established practices, or pursuant to national regulations or international agreements, are sold by weight or by measure, in pre-selected nominal unit quantities with the same value for all prepackages of the same pattern.

Products sold by the piece or in accordance with specific conventions (e.g., size and number in the case of fruit) and "premeasured" products, i.e., ones prepacked in quantities measured by the packer (e.g., on "weight/price weighing machine" in the case of certain preserved meats) are not included.

- c) the Directive does not lay down how products are to be sold - by weight or by volume, in pre-selected or pre-measured quantities (prepackages); it is applicable, however, if the products in question are sold by weight or by volume, in preselected quantities, in the range 5 g or 5 ml to 10 kg or 10 l.

In order to ensure that market conditions are intelligible and consumers are protected, proceeding from the principle of mutual recognition of the checks carried out by the competent authorities of the Member States and looking only at the quantitative aspect of the matter, the Directive establishes how the contents of prepackages shall be determined, specified and checked.

The Directive does not deal with commercial practices - but is concerned purely with metrology. The provisions relating to labelling, for example, are strictly limited to what is needed in order to know the quantity contained and who was responsible for measuring it.

The provisions of this Directive are therefore limited to requirements regarding:

1. The marking on the prepackage of the weight or volume contained;
2. The maximum permissible errors in the weight and volume of the contents in relating to the nominal weight and volume (the average, and individual errors);
3. The method employed by the competent departments or agencies in checking the weight and volume of the contents of prepackages.

2.2. Relation between stated and actual amounts contained

At the present time, two different principles govern this major problem in the Member States:

- in some countries, the actual quantity must be not less than the stated quantity;
- in others, the actual quantity must on average be equal to the stated quantity.

The question of which to select was discussed at length when the Directive was being drawn up. Since unanimity among the various government experts proved to be unattainable the Commission -

falling into line with the great majority of those experts - chose the second alternative, for the following reasons:

- a) At international meetings, particularly at the last meeting of the CODEX ALIMENTARIUS Committee (Ottawa, May-June 1973), the delegations were virtually unanimous in favouring this method (i.e., the 'average' method). The Commission considered that choosing the first method would carry with it the risk of the Community's being isolated in international trade with non-member countries.
- b) The reputation for simplicity created for the 'minimum' method by its adherents appears to be negated by the need to take account anyhow of the accuracy of the filling and inspection equipment, which leads the countries where it is used to employ a statistical method of checking similar to that prescribed in the Directive.
- c) The Commission's proposal is also consistent with that relating to prepackages containing beverages which was forwarded to the Council on 29 February 1972.

Of course, if the Council, when deciding upon the directive relating to beverages, decided to adopt the minimum-contents principle, the Commission would forthwith submit the appropriate proposals for altering this Directive in order to maintain the necessary uniformity, since the two proposals complementary.

- d) In order to allay the fears of several consumer associations, however, it is pointed out that these products are fast-moving consumer goods of which every consumer generally buys several examples a year. The average-contents principle, therefore, which is perfectly fair to the packager, and to consumers in the aggregate, is also fair in practice to every consumer considered as an individual. In order to limit the unpleasantness of sometimes receiving short weight or volume (which, over several purchases, would be made good by an over-weight or volume prepackage), maximum permissible errors in deficiency have been specified in order to limit the amount of scatter. They have been kept to the minimum strictly essential to take account of technical capabilities.

Even when every precaution is taken to ensure that the actual contents of prepackages equal the nominal quantity, it is actually found that in mass production, owing to the inevitable imperfections of filling and measuring equipment, the values of the actual quantity display a certain "scatter" and constitute a population which generally conforms closely to a normal or Gaussian distribution curve. If the average (mean) is aligned with the nominal quantity, the number of prepackages with a content of any given value decreases very rapidly the more that value diverges from the average (mean). The maximum permissible error is therefore a limit reached by only a very small number of units. Specifying not only the average but also maximum permissible errors in deficiency, compels the packager: - either to reduce scatter as much as possible, or - to raise the average.

In any case, because the average is attained, deficient prepackages are always at least compensated for by those with more than the stated quantity, while observance of the maximum permissible errors means that shortages and the number of short prepackages are reduced.

2.3 Methods of checking provided for by the Directive

2.3. - 1 Preliminary remarks

It should first be pointed out that the Directive clearly states (Annex I, Section 5) that it does not preclude any checks that may be carried out by the competent authorities of the Member States in the course of trade.

Furthermore, under the terms of Article 15 (2) of the Directive of 26 July 1971 (the general Directive), a prepackage which bears EEC signs or marks but does not satisfy the requirements of this Directive, particularly in respect of the maximum permissible errors, may be banned from service (i.e., withdrawn from sale) as may a prepackage bearing only national marks.

It should be pointed out, however, that present checks are purely repressive. In most cases they cause the destruction of the packaging of the products being checked. They are therefore restrictive and costly for the trader and the service (whose repayment budget is usually small), and in practice they can only cover a limited number of products. For this reason, in order to provide a better public guarantee and better consumer-protection, the Directive introduces preventive provisions, an innovation in nearly all the Member States.

2.3 - 2 - Data on the quantity contained

Apart from other marks which may be required by various directives or regulations, any prepackage made up in accordance with this Directive must bear the following markings, made or affixed in such a manner as to be sufficiently durable (indelible), easily legible (contrasting sufficiently with the background) and visible on the prepackage when displayed in the normal manner (grouped on a face or part of the package which is not obscured either in the usual position of display, or by an outer wrapping):

- the nominal quantity (minimum sizes are laid down);
- a sign or marking enabling the competent department to identify the party responsible for packaging¹;
- a small "e" indicating that the prepackage is supposed to satisfy the requirements of this Directive.

Article 12 of the general Directive of 26 July 1971 provides that Member States shall take all necessary measures to prevent the use of signs or markings liable to be confused with the EEC signs or markings, such as the "e" mentioned above.

¹ This is of interest only to the inspection departments, which want to be able to go back to the source. For the consumer, (the final purchaser), the responsible party is the seller.

2.3 ÷ 4 - Control of actual contents on the packager's (or importer's) premises

Preventive checks on the packer's premises provided for by the proposal which, it must be remembered, supplement the repressive checks at the final point of sale, have a number of advantages:

- At this level, the inspecting department is in direct contact with the party responsible for the quantity packaged, can acquaint itself with the method of, and examine the equipment used to make up the prepackages and form an impression of the environment in which the operations are carried out.
- It can often easily establish the tare weight of the packages sufficiently accurately to be able to carry out a non-destructive test by weighing.
- It can check the uniformity of complete or, at least, large batches, and finds good conditions under which to determine the average contents, and scatter. It is thus able to judge the packager's intentions.
- In most cases, it induces the packager to carry out a continuous check on its products by a method approved by the department, which monitors its application (e.g., statistical control using cards).

Since there are far fewer packagers than retailers and inspection is non-destructive, spot checks, carried out as thoroughly and as often as the size of the department permits, make it possible to monitor the actual quantities contained, and to do so practically continuously.

In view of the high rate of production of prepackages which can be as much as several tens of thousands an hour, a check carried out on the packager's premises can only take the form of random sampling effected under the internationally agreed rules for this type of check.

In order to ensure uniformity in this, Annex II to the Directive provides a reference method which fixes the degree of severity of checks carried out by the competent official authorities of the Member States and also permits mutual recognition of such checks.

The Member States may also in practice adopt any other, equally effective method.

It should be remembered, however, that the recommended procedures are based on the tables in the Military Standard which still appear to be the most commonly used in statistical quality control.

The minimum individual permissible contents are checked by means of a method based on attributes (sound or defective)-which may, moreover, be valid for non-Gaussian distributions - which is quick and easy to use. The Member States may choose between single and double sampling plans; both are equally effective, but, with the double sampling plan, which is a little more difficult to use, the total number of prepackage samples to be checked can be reduced.

The method used to check the average contents is based on measurement. Since measuring takes longer than procedures designed to check that a minimum-contents limit has been complied with, it was deemed preferable to adopt as the scatter factor the standard deviation of the sample, which provides an effective means of assessing the standard deviation of the batch of prepackages under inspection.

The reasons for including the third subparagraph of Section 4 of Annex I should also be stated: if the average is correct (this is required in all cases), a batch may be accepted when the scatter is statistically verified if the number of defective units in the sample is below the acceptance criterion; if a defective unit thus discovered in the sample from an accepted batch displays a minus error greater than twice the maximum permissible error, it can not be marketed; if the error is below or equal to twice the maximum permissible error, it may be returned to the batch and consequently sold.

III. SPECIFIC COMMENTS FROM BUSINESS ORGANIZATIONS AND CONSUMERS' ASSOCIATIONS.

3.1. Tolerances and product classes.

It proved extremely difficult to draft a proposal which would take account of the problems specific to the packing of each type of product. Clearly, if this had been attempted, the number of classes would have been so large, and the problem of defining them precisely so great, as to nullify completely the clarity which the proposal for a Directive is intended to create.

In agreement with experts, the Commission therefore decided to keep only two product classes and to set less stringent tolerances for products which present major filling problems.

Despite this, there is no doubt that in certain cases producers will find it difficult to keep within the prescribed tolerances by setting the average at the nominal value. In these cases, in order to meet the required minimum values, they would have to set the average actual contents above the nominal value.

This drawback did not escape the experts but they considered that since the rule was harmonized at Community level it could not distort competition between producers in the various Member States, and, furthermore, that producers would thereby be encouraged to use suitable equipment and to control and inspect their products more strictly. It was also considered inadvisable, as stated earlier, to increase the number of product classes.

On the other hand, certain consumers' associations would have liked the tolerances to be made tighter.

It is perhaps useful to stress once again that the prescription of maximum permissible errors is not equivalent to a routine tolerance in deficiency, but rather to a limitation of scatter.

Maximum permissible error values were chosen in the light of the results of a great many checks, surveys and tests, conducted mainly in France and Germany, so that the present capabilities of properly equipped undertakings were taken into account.

Any appreciable reduction of these tolerances would raise the value of the product because, to comply with stricter error values, the packagers would be obliged either to equip themselves with far more costly and sophisticated machinery, or to slow down the rate of production, or to overfill systematically. This being the case, it did not appear advisable to comply with the wishes of the consumer associations.

3.2. Scope of the Directive

Several trade associations expressed the wish that, following the example of a number of countries, the scope of the Directive should not extend so far downwards but include only those greater than 20 g and 20 ml, or even 50 g and 50 ml.

In view of the subject of their concern, it is not certain, however, that such an amendment would have been to their advantage. Indeed, since application of the Directive is optional, prepackagers are entitled to benefit from the regime of free movement offered by the Directive for prepackaged products with nominal contents between 5 g or 5 ml and 10 kg or 10 l, but they are in no way obliged to avail themselves thereof provided that they comply with national laws.

However, some governments consider it necessary to indicate the weight, even of small quantities, of certain high-cost products such as condiments or seeds. If these were excluded from the scope of the Directive, the existing national disparities which create obstacles to trade would persist. Moreover it is clear that, unless the national regulations of the country where the product is marketed forbid it, the prepackaging company may, for instance, make as EEC prepackages only those with a nominal quantity not less than 50 g or 100 ml.

3.3. Rules concerning permissible quantity ranges

The Commission is aware that the problem of permissible ranges (series) of volumes and weights must also be settled at Community level, as it was in the proposed Directive on beverages, and as is the wish of the consumers' associations and business organizations.

Unfortunately this question is very complex because this proposal covers almost all prepackaged products in the Member States, where measuring and commercial practices are very diverse¹.

The variety of nominal quantities of prepackages offered to the consumer is so wide that the responsible authorities of the various Member States have often been prompted to restrict their number in order to protect consumers, to raise the standard of fair competition between manufacturers and dealers and to rationalize production and distribution. However, preliminary discussions on this point revealed such widely diverse practices and rules that it was deemed preferable to put forward this first proposal while continuing the search for a solution to the problem of ranges. As soon as the Commission is in a position to supplement this proposal, therefore, it will present a further proposal for a Directive indicating the ranges of permissible quantities. The adoption of all these provisions, which form a sort of European quantitative charter on the making-up of prepackaged products, will meet an ever-increasing desire on the part of the consumer for greater clarity in this field.

IV. SUMMARY

To sum up:

The directive applies to prepackages of constant nominal quantity of the major consumer products listed in Annex III.

¹For instance, certain products are sold by volume in some countries and by weight in others. Since their density is not constant, a range valid for both quantities cannot be defined.

It is strictly confined to the field of legal metrology and has no bearing on labelling in general or of the way in which products must be sold.

The checks now carried out by the competent authorities of the Member States at all stages of the commercial process, and especially at the point of final sale, will continue.

But these repressive checks cannot be continuous. To ensure that market conditions are fully intelligible, and to give consumers a better quantitative guarantee, (assuming mutual recognition of the checks performed), the Directive introduces virtually continuous preventive inspections at source, i.e. on the packager's or importer's premises.

The responsible packager is required to ensure that the actual contents of the prepackages are at least equal to the nominal quantity; this requirement applies to the average of every batch of the same make. In addition, the scatter of actual content values below the nominal value is limited by the setting of a maximum permissible error in deficiency.

Prepackaging firms must keep a constant check on what they produce, under the supervision of the competent official bodies. The latter will also carry out statistical control by sampling, similar in effectiveness to the reference method described in Annex II.

As an annex or supplement to this Directive, a study will be made of the ranges of values imposed for the nominal quantities of the prepackages of certain products.

V. CONSULTATION OF THE PARLIAMENT AND ECONOMIC AND SOCIAL COMMITTEE

Pursuant to the provisions of Article 100 (2), the opinions of these two institutions are needed because implementation of the Directive will require amendments to the laws of certain Member States.

ANNEXE
TO THE EXPLANATORY MEMORANDUM

Laws relating to prepackages currently in force in the Member States

BELGIUM

- Law on commercial practice, (14 July 1971)
- Royal Decree of 4 September 1972 on quantity specification.

DENMARK

- Decrees relating to:
 - The marking of net weight or net quantity on preserved foods (Monopoltilsynet, 4 April 1961);
 - Deep-frozen foodstuffs (Monopoltilsynet, 15 November 1965);
 - Prepackaged goods (21 September 1964, 10 March 1965, 21 March 1966, 17 November 1967);
- Decree amending the decree on preserved and semi-preserved fish (Ministry of Fisheries, 1 September 1966).

GERMANY

- Law on metrology and the verification of weights and measures (Law on verification - Eichgesetz), 11 July 1969.
- Law on prepackaging (Fertigpackungsverordnung), 16 December 1971.

FRANCE

- Law of 13 June 1866 on trade practice.
- Law of 1 August 1905 on the suppression of fraud, together with the following implementing decrees:
 - Decree No. 72639 of 12 October 1972 implementing the Law of 1 August 1905 on the suppression of fraud with regard to the conditions of sale of foodstuffs, i.e., solids and liquids intended for human and animal consumption, and also the rules governing the labelling and presentation of all goods which have been prepackaged for retail sale.
- Order No. 45 - 2405 of 18 October 1945 on liquid volume measurement (Journal Officiel, 19 October, 1945).

IRELAND

- Merchandise Marks (pre-packed goods).

ITALY

- Royal Decree of 23 August 1890, No. 7088
(with successive amendments)
Sole text of the laws governing weights and measures.
- Law of 30 April 1962, No. 283
(with successive amendments)
Hygiene requirements in respect of the manufacture and sale of
foodstuffs and beverages.
(An implementing regulation is currently being prepared).

LUXEMBOURG

- Law of 17 May 1882 on weights and measures.
- Grand-Ducal Royal Decree of 30 May 1882 implementing the law on
weights and measures.
- Opinion delivered by the Director-General for Finance on 11 April
1933 stating certain requirements (including the specification of
weight or measurement and respect of prepackages) stipulated in
the law of 17 May 1882 on weights and measures.

NETHERLANDS

- Food and Drugs Act (Warenwet), 1935.
- Implementing provisions of the Food and Drugs Act, and in particular
the General Order (Algemeen Besluit).
- Royal Decree on Government marking of butter (Rijksbotermerkbeschikking),
1947.
- Regulations deriving from Statutory Trade Organization
(PBO Verordeningen) dealing mainly with the products referred
to in this Directive.

UNITED KINGDOM

- Weights and Measures Act, 1963.
- Trade Descriptions Act, 1968.
- Laws and regulations made on the basis of these two Acts.

PROPOSAL
FOR A COUNCIL DIRECTIVE 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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 100 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas in most of the Member States sale presentation conditions of products in prepackages are the subject of mandatory regulations which differ from one Member State to another, thereby hindering trade in such prepackages;

Whereas such provisions must therefore be approximated;

.../...

Whereas, in order to enable consumers to be correctly informed, the method of marking the nominal weight or volume of the product contained in the prepackage should be indicated;

Whereas it is also necessary to specify the maximum permissible errors in the content of prepackages and whereas in order to facilitate control of compliance of prepackages with the provisions laid down a reference method for such control should be defined;

Whereas Article 16 of the Council Directive of 26 July 1971 on the approximation of the laws of the Member States relating to common provisions for both measuring instruments and methods of metrological control¹ provides that the harmonisation of the requirements for marketing certain products, in particular as regards the prescription, measurement and marking of pre-packed quantities, may also be covered by specific directives;

Whereas the Council Directive of 26 July 1971 states that the specific directives may specify, conditions permitting, the date on which each Member State may repeal the national provisions applicable to products similar to those which comply with Community provisions; whereas in the present case it is not yet permissible to set such a date;

HAS ADOPTED THIS DIRECTIVE:

¹ DJ No L 202, 6 September 1971.

Article 1

This Directive shall apply to prepackages containing products listed in Annex III and intended for sale in constant unit nominal quantities which are:

- equal to values predetermined by the packer;
- expressed in units of weight or of volume;
- not less than 5 g or 5 ml and not more than 10 kg or 10 l.

Prepackages which do not bear an indication by weight or by volume are not covered by this Directive.

Article 2

A prepackage within the meaning of this Directive is the combination of a product and the individual package in which it is prepacked.

A product is prepacked when, without the purchaser being present, it is placed in a package of whatever nature in such a manner that the quantity of product contained therein has a predetermined value and cannot be altered without the package being opened or undergoing a perceptible modification.

Article 3

Prepackages made up in accordance with this Directive shall be marked with the weight or volume, referred to as the nominal weight or nominal volume, of product which they are required to contain, pursuant to Annex I hereto, at the time of packaging.

Prepackages containing liquid products shall be marked with their nominal volume and prepackages containing other products shall be marked with their nominal weight.

If, for a class of product or for a given type of prepackage, commercial practice regarding sale by weight or by volume is not the same in all Member States, and if such prepackages are not marked both with their nominal weight and with their nominal volume, they shall be marked in accordance with the commercial practice prevailing in the country to which they are consigned.

Until the expiry of the transitional period, during which the use of the Imperial units of measurement appearing in Annexe II to the Council Directive of 18 October 1971 concerning units of measurement (1), modified by the Act concerning the conditions of Accession and Adjustments to the Treaties (2), is authorised in the Community, the indication of the nominal weight and/or nominal volume expressed in IS units in accordance with Annex I sub-section 2.1., to this Directive may be accompanied by that of the equivalent value in Imperial (UK) units of measurements, calculated on the basis of the following practical conversion factors :

1 g = 0.0353 ounce (avoirdupois) 1 ml = 0.0352 fluid ounce
1 kg = 2.205 pounds 1 l = 1.760 pints or 0.220 gallon.

Article 4

The prepackages which are authorized to bear the EEC symbol provided for in Annex I, sub-section 2.3, shall be these which contain products listed in Annex III and which satisfy the requirements of this Directive, and in particular Annex I thereto.

They shall be subject to metrological checking under the conditions set out in Annex I, sub-section 4, and in Annex II.

Article 5

The Member States shall not, for reasons concerning the markings required to be borne by prepackages pursuant to this Directive, the determination of the volume or weight of prepackages, or the methods by which the latter have been measured or checked, refuse, prohibit or restrict the marketing of prepackage bearing the EEC symbol provided for in Annex III which satisfy the requirements of this Directive, Annex I section 4 and Annex II thereto.

Article 6

Member States shall bring into force the measures necessary to comply with this Directive within a period of 18 months from the date of its notification and shall immediately inform the Commission of such measures.

Member States shall ensure that the text of all provisions adopted under national law in the field covered by this Directive is communicated to the Commission.

Article 7

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President.

(1) O.J. n° L 243, 29.10.1971, page 29

(2) O.J. n° L 73, 27.03.1972, page 119

A N N E X E I

I --The quantity of product contained in a prepackage (or quantity of filling), known as the "actual contents" shall be measured or checked (by volume or by weight) on the responsibility of the packer. The measurement or check shall be carried out by means of a legal measuring instrument appropriate to the nature of the operations to be performed.

One of the several methods of meeting the measuring or checking requirement is to use a measuring container, as defined in the Directive relating thereto and filled under the conditions prescribed therein, when making up the prepackage.

The check may be performed by sampling.

Where the actual contents are not measured, the check performed by the packer shall be so organized that the value of the said contents is effectively ensured.

This condition is fulfilled if the packer carries out a production check in accordance with the procedures recognized by the competent authorities in the Member State and if he holds at the disposal of these authorities the documents containing the results of such checks, and, if appropriate, the corresponding items.

2 --All prepackages made up in accordance with this Directive shall bear on the package the following markings affixed in such a manner as to be indelible, sufficiently contrasted, easily legible and visible on the prepackage in normal conditions of presentation:

2.1 The nominal quantity (nominal weight or nominal volume), expressed in litres or kilograms, centilitres, millilitres or grams, and marked in figures at least 6 mm high if the nominal quantity is more than 1,000 g or 100 cl, 4 mm high if it is from 1,000 g or 100 cl down to but not including 200 g or 20 cl or less, and 3 mm high if it is not more than 200 g or 20 cl, followed by the symbol for the unit of measurement used or, where appropriate, by its name, in accordance with the provisions of the Council Directive of 18 October 1971 relating to units of measurement.

Markings in Imperial (UK) units shall be in letters and figures of dimensions not larger than those of markings in IS units.

2.2 A mark or inscription enabling the department concerned to identify the packer or the person responsible for the packing or the importer established in the Community.

2.3- A small "e", at least 3 mm high, placed in the same visual field as the indication of the nominal weight or nominal volume and certifying that the prepackage meets the requirements of this Directive.

This letter shall have the form shown in the drawing contained in Annex II, sub-section 3, to the Council Directive of 26 July, 1971 concerning the provisions common to measuring instruments and to methods of metrological checking.

Article 12 of the aforesaid Directive shall apply mutatis mutandis.

3. Prepackages covered by this Directive shall be made up in such a way that the completed prepackages satisfy the following requirements:

3.1 The actual contents of the prepackages at a temperature of 20°C* shall not be less, on average, than the nominal quantity.

3.2 The maximum permitted error in deficiency in the contents of a prepackage, i.e., the maximum permitted difference in deficiency at a temperature of 20°C between the actual contents and the nominal quantity of the prepackage, is fixed in accordance with the table below, in which products are divided, as set out in sub-sections 3.3 and 3.4., into two classes ("A" and "B") according to their physical characteristics and/or the processing they undergo. The difference between the nominal quantity and maximum permitted error is known as the "minimum permitted contents".

For the use of the table, maximum permitted errors in percentages should be rounded off to the nearest one-tenth of a gram or millilitre.

Nominal quantity Q_n in grams or millilitres	Maximum permitted errors in deficiency			
	Class "A"		Class "B"	
	as a % of Q_n	g or ml	as a % of Q_n	g or ml
5 - 25	-	-	9	-
25 - 50	4.5	-	9	-
50 - 100	-	2.25	-	4.5
100 - 200	2.25	-	4.5	-
200 - 300	-	4.5	-	9
300 - 500	1.5	-	3	-
500 - 1000	-	7.5	-	15
1000 - 10 000	0.75	-	1.5	-

*This theoretical rule does not affect the temperature at which the measurements are really made, which with some products may have to be different from the reference temperature (e.g., ices and deep-frozen goods).

3.3- The following products shall be considered as belonging to Class "B":

- prepackaged products of a nominal quantity less than 25 grams or millilitres;
- liquid products;
- products the flow properties or density of which cannot be kept constant except at the cost of considerable technical effort;
- products containing several substances of different densities or different physical phases and/or the packaging of which requires several operations;
- products which, after they have been packed, are subjected to additional processing, e.g., heat treatment, likely to affect their weight in an irregular manner;
- products with a high unit weight, i.e., products composed of pieces, fragments or grains the maximum unit weight of which is greater than or equal to the maximum permitted error corresponding to the nominal weight of the prepackage which contains them, as set out in the table in sub-section 3.2 (Category "A").

3.4 - Products not falling within the categories referred to in the preceding sub-section (3.3) shall be considered as belonging to Class "A".

4. - A check that the prepackages comply with the provisions of this Directive shall be carried out by the competent authorities in 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.

This sampling check shall be carried out in accordance with the accepted rules on quality control. Its effectiveness shall be comparable to that of the reference method specified in Annex II.

However, no prepackage having an error in deficiency greater than twice the maximum permitted error, as defined in Annex I, sub-section 3., shall knowingly be marketed under the EEC symbol provided for in sub-section 2.3.

5. - This Directive shall not preclude any checks that may be carried out by the competent authorities of the Member States in the course of trade.

Article 15.2 of the above-mentioned Directive of 26 July shall apply *mutatis mutandis*.

A N N E X E II

This Annex lays down the procedures for the checking of prepackages in order to meet the requirements of Article 4 of the Directive and those of Annex I, sub-section 4. Except in the case referred to in 4.1.3. below, these checks shall take the form of random sampling.

1. Requirements for determination of the actual contents of prepackages.

The actual contents of prepackages may be measured directly by means of weighing or volumetric measuring instruments or, in the case of liquids, indirectly by weighing and measuring the density of the prepacked product.

Irrespective of the method used, the error made in the determination of the actual contents of a prepackage shall not exceed one-fifth of the maximum permitted error for the nominal quantity of the prepackage, as set out in the table in Annex I, sub-section 3.2.

2. Terminology.

The terminology of the statistical vocabulary used in this Annex is that of the vocabulary of statistical quality control.

3. Place for the performance of the check

Checks shall, as a general rule, be performed on the premises where the prepackages were filled, but may also be performed at their place of storage notably in the case of imports.

4. Requirements for checking batches of prepackages.

The checking of prepackages shall be carried out by sampling and shall comprise the following two checks:

- a first check covering the average actual contents of the prepackages in the sample;
- a second check covering the actual contents of each prepackage in the sample.

A batch of prepackages shall be considered acceptable if the results of both these checks satisfy the acceptance criteria.

For each of these checks, provision is made for the use of two sampling schedules:

- one for non-destructive testing;
- the other for destructive testing.

The latter method shall be limited to the absolutely essential minimum.

Destructive testing shall therefore be only performed when non-destructive testing is impracticable.

4.1 Composition of the prepackage batch

4.1.1. The batch shall be composed of all the prepackages of the same type and the same production run which are to be inspected.

The number of prepackages in a batch shall not, however, exceed 10,000.

4.1.2. When prepackages are checked at the end of the packing line, the number in each batch shall be equal to the maximum hourly output of the packing line, without any restriction as to the number of prepackages in batch.

4.1.3. For batches in which the number of prepackages N is less than 100, the non-destructive test, where performed, shall be 100%.

In such cases a batch shall be finally accepted if this check shows that:

- 1) the average actual contents of the batch is greater than or equal to the nominal quantity;
- 2) the number of prepackages displaying an error greater than the maximum permitted error is not more than $0.025 N$, rounded upwards to the nearest whole number.

4.2. Method of sampling.

The prepackages making up the samples shall be taken at random from the batch submitted for checking.

As a general rule, sampling shall be completed before a metrological examination of the samples is begun (except for the second sample where a double sampling scheme is used).

4.3 - First check:

Checking of the average actual contents of the individual prepackages making up a batch.

For the purpose of this check, specimens shall be taken at random from among the individual units in the sample required for the checking of the minimum acceptable contents if the number of prepackages in the sample is sufficient. If not, an additional sample shall be taken.

4.3.1. A batch of prepackages shall be considered acceptable for the checking of the average contents if the mean value

$$\bar{x} = \frac{\sum x_i}{n}$$

of the actual contents x_i of the n prepackages

in the sample is greater than the value:

$$Q_n - \frac{s}{\sqrt{n}} t_{1-\alpha}$$

in which:

Q_n = the nominal quantity in the prepackages,

n = the number of prepackages in the sample to be checked,

s = the estimated standard deviation of the actual contents of the batch,

$$s = \sqrt{\frac{\sum (x_i - \bar{x})^2}{n - 1}}$$

$t_{1-\alpha}$ = quantile of the order of 0.995 of the Student variable at $(n - 1)$ degrees of freedom ($\gamma = n - 1$).

4.3.2. Criterion for acceptance or rejection of the batch of prepackages for the first check.

4.3.2.1. Criteria for non-destructive testing

Number in batch	Number in sample	Criteria	
		Acceptance	Rejection
100-500 (incl.)	30	$\bar{x} \geq Q_n - 0.503s$	$\bar{x} < Q_n - 0.503s$
> 500	50	$\bar{x} \geq Q_n - 0.379s$	$\bar{x} < Q_n - 0.379s$

4.3.2.2. - Criteria for destructive testing

Number in batch	Number in sample	Criteria	
		Acceptance	Rejection
≤ 500	8	$\bar{x} \geq Q_n - 1.237s$	$\bar{x} < Q_n - 1.237s$
501 - 1200	13	$\bar{x} \geq Q_n - 0.847s$	$\bar{x} < Q_n - 0.847s$
> 1200	20	$\bar{x} \geq Q_n - 0.640s$	$\bar{x} < Q_n - 0.640s$

4.4 - Second check: checking of the minimum acceptable contents.

Prepackages in the batch the actual contents of which are less than the minimum acceptable contents shall be declared defective.

For checking by sampling, one of the following sampling schedules shall be used, the choice being left to each Member State.

4.4.1. Single sampling project

The number of prepackages checked shall be equal to the number in the sample, as indicated in the schedule:

- if the number of defective units found in the sample is less than or equal to the criterion for acceptance, the batch of prepackages shall be considered acceptable for the purpose of this second check;
- if the number of defective units found in the sample is equal to or greater than the criterion for rejection, the batch of prepackages shall be rejected.

4.4.1.1. Schedule for non-destructive testing.

Number in batch	Number in sample	Number of defective units	
		Acceptance criterion	Rejection criterion
100 - 150	20	1	2
151 - 280	32	2	3
281 - 500	50	3	4
501 - 1200	80	5	6
1201 - 3200	125	7	8
3201 and over	200	10	11

4.4.1.2. Schedule for destructive testing

Number in batch	Number in sample	Number of defective units	
		Acceptance criterion	Rejection criterion
\leq 500	8	0	1
501 - 3200	13	1	2
$>$ 3200	20	1	2

4.4.2. Double-sampling schedule for non-destructive testing.

The first number of prepackages checked shall be equal to the number of units in the first sample, as indicated in the schedule:

- if the number of defective units found in the first sample is less than or equal to the first acceptance criterion, the batch shall be considered acceptable for the purpose of this second check;
- if the number of defective items found in the first sample lies between the first acceptance criterion and the first rejection criterion, a second sample, the number of units in which is indicated in the schedule, shall be checked.

The numbers of defective units found in the first and second samples shall be added together;

- if the aggregate number of defective units is less than or equal to the second acceptance criterion, the batch shall be considered acceptable for the purpose of this second check;
- if the aggregate number of defective units is greater than or equal to the second rejection criterion, the batch shall be rejected.

Number in batch	Samples			Number of defective units	
	Order	Number	Aggregate number	Acceptance criterion	Rejection criterion
100-150	1st	13	13	0	2
	2nd	13	26	1	2
151-280	1st	20	20	0	3
	2nd	20	40	3	4
281-500	1st	32	32	1	4
	2nd	32	64	4	5
501-1200	1st	50	50	2	5
	2nd	50	100	6	7
1,201-3,200	1st	80	80	3	7
	2nd	80	150	8	9
3,201 and over	1st	125	125	5	9
	2nd	125	250	12	13

ANNEX III

Product groups covered by the Directive

1. Foodstuffs (without reference to the CCT), other than liquids covered by the Directive on the making-up by volume of certain prepackaged liquids.
2. Perfumery, cosmetics and toilet preparationsCCT 33.06
3. Soaps - surface-active)
detergents - washing powders).....CCT 34.01
34.02 B
4. Wax polishes; waxes; metal polishesCCT 34.05
5. Horticultural fertilizersCCT 31.05 B
6. Glues and adhesivesCCT 35.06
7. Herbicides; pesticidesCCT 38.11
8. Paint solventsCCT 38.18
9. Pet foods without reference to
the CCT
10. SeedsCCT 12.03
11. Paints and varnishes; inks CCT 32.09 32.10
32.11 32.12
32.13