



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.4.2006  
COM(2006) 171 final

2004/0248 (COD)

Amended 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**

(presented by the Commission pursuant to  
Article 250 (2) of the EC Treaty)

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**(Text with EEA relevance)**

1. BACKGROUND

Adoption of the proposal- COM(2004) 708 final 25 October 2004

Transmission of the proposal to the Council and to the European Parliament  
- COM(2004) 708 final – 2004/0248 (COD) -  
in accordance with article 95 of the Treaty: 25 October 2004

Opinion of the European Economic and Social Committee: 6 April 2005

Opinion of the European Parliament – first reading: 2 February 2006

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The proposal aims to simplify the current EC legislation prescribing nominal quantities. It will deregulate current EC and national legislation in this area. As an exception fixed mandatory nominal quantities will remain only in the wine and spirits sectors, reflecting only those quantities most sold to consumers.

3. OPINION OF THE COMMISSION ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT

3.1. Amendments accepted by the Commission: 1, 2, 8, 10, 11, 13, 14, 16.

The Commission can accept the following amendments with the wording proposed by the European Parliament.

Amendment 1 states as a fact that consumer protection has improved by generic directives which have been adopted after the fixed sizes came into being.

Amendment 2 partly overlapping with recital 7, introduces a reference to the fact that some fixed mandatory nominal quantities are to be retained for the time being.

Amendment 8 adds a recital which is currently standard for transposition of directives.

Amendment 10 clarifies that the rules on fixed nominal quantities do not apply to sales in duty-free shops.

Amendment 11 replaces the 20 year sunset clause for the fixed nominal quantities for certain sectors by way of derogation by a clause asking the Commission to review the need for derogations (Amendment 16).

Amendment 13 deletes the reference to article 4 as the mandatory nominal quantities for aerosol dispensers will be abolished by the new article 4 (amendment 12)

Amendment 14 deletes the request to Member States to prepare a table of correspondence and is the consequence of the new recital in Amendment 8.

Amendment 16 introduces a review clause requiring regular reporting by the Commission and this new obligation is the consequence of abolishing the sunset clause by Amendment 11.

3.2. Amendments accepted in principle by the Commission: 3, 6, 7, 12, 20.

The Commission can accept in principle the following amendments.

Amendment 3 introduces a new recital after recital 5 stating that an information campaign should be launched about unit pricing. The Commission suggests a more open wording:

*“Implementation of the Directive should be accompanied by **more information for consumers and industry to enhance understanding of unit pricing.**”*

Amendment 6 changes recital 8 motivating a sunset clause on mandatory nominal quantities, and introduces instead the concept of a review clause. The Commission agrees with the review clause, but suggests a wording more consistent with the basic philosophy of the proposal that fixing mandatory nominal quantities is a derogation to the principle of deregulation; furthermore, the recital should clarify that for those sectors where nevertheless mandatory nominal quantities are fixed, only those quantities should be mentioned that are most sold to consumers.

*“**Since the maintenance of mandatory nominal quantities should be regarded as a derogation, it should be periodically reassessed in the light of experience and in order to meet the needs of consumers and producers. For these sectors, existing Community legislation must be adapted, in particular to limit the fixed Community nominal quantities only to those most sold to consumers.**”*

By means of amendment 7 Parliament adds a second sentence to recital 9 expressing its concern on the quality of labelling of quantity, shared by the Commission, relating to the implementation of Directive 76/211, Annex 1, point 3 on metrological requirements for pre-packed products. However, the Commission does not share the idea expressed by the Parliament in its amendment that fixed nominal quantities protect vulnerable consumers. Furthermore, the need to enhance more readable labelling should be subject of a separate recital

*Recital 9 “In order to promote transparency, all nominal quantities for pre-packed products should be set in a single legislative text, and Directives 75/106/EEC and 80/232/EEC should be repealed.*

*Recital 9bis: **In order to increase protection for consumers, in particular the vulnerable consumers, such as the disabled and the elderly, proper attention should be paid to weight***

***and volume indications on consumer product labelling being more easily legible and visible on the prepackage in normal conditions of presentation.***

Amendment 12 intends to delete fixed nominal quantities for products sold in aerosol dispensers. The Commission agrees, but the wording of the amendment should be brought technically into line with the terms used in the Aerosols Dispenser Directive 75/324/EEC:

*“1. The aerosol dispensers shall indicate **the nominal total capacity of the container**. The indication shall be such as not to create confusion with the nominal volume of the contents.*

*2. By way of derogation from Article 8 (1) (e) of Council Directive 75/324/EEC, products which are sold in aerosol dispensers need not be marked with the nominal weight of their contents.”*

Amendment 20 is to add 2 more sizes to the range for spirits, which has also been requested by industry. The Commission agrees. However, in order to align the terminology to the Council Regulation on Spirit Drinks (Reg. 1576/89), the term “Spirits” used by Parliament should be replaced by “Spirit drinks”.

*“Spirit drinks*

*On the interval 100ml – 2000ml only the following 9 sizes:*

*ml: 100 — 200 — 350 — 500 — 700 — 1000 — 1500 — 1750 — 2000”*

3.3. Amendments not accepted by the Commission: 4, 5, 9, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33.

The Commission does not accept amendment 4 which adds a new recital saying that a “study devoted to the impact of the directive” shows the relevance of fixed sizes for vulnerable consumers for the following reasons:

- The reference to “a study” is too vague.
- The impact study by EP did not make this point convincingly. The Commission impact assessment does not support conclusions of the EP impact assessment.
- Vulnerable consumers do not become less vulnerable by mandatory rules on pack-sizes. Seeing a package in itself does not allow to know the actual contents, as perception is strongly influenced by the packing material (tetra-pack, plastic, glass), the type of container (one time use, reusable) and the form of the pack (round, square). Consumers must therefore read contents indications

The Commission does not accept amendment 5 on the grounds that there is no evidence that liberalization gives rise to a proliferation of pack-sizes and market complications; in particular not in the sectors that Parliament wants to add. Nor is it established that there is an impact on the environment.

Amendment 9 exempts a number of sectors from the scope in Article 1 of the Directive and states that for these sectors national legislation shall continue to apply. The Commission disagrees because there is no evidence for the need to regulate these sectors. Furthermore, the Directive should not jeopardise the concept of the Internal Market by allowing national derogations, that could in any case not be applied to products legally manufactured or placed on the market in another Member State.

Amendment 15 introduces a transitory regime for those products for which Parliament proposes to introduce regulation regarding mandatory nominal quantities. As the Commission rejects the idea of regulating new sectors, it also opposes the provision for a transitional period.

Amendment 17 introduces mandatory nominal quantities sizes for drinking milk, for which currently there are no mandatory sizes fixed at the EU level. Some Member States have national ranges, either mandatory or voluntary for home producers. But national law is never applied to products legally manufactured or placed on the market in other Member States. No sound reasons have been forwarded justifying the need to introduce regulation at Community level concerning mandatory nominal quantities for milk products.

Amendment 18 and Amendment 19 reflect UK mandatory nominal quantities reflecting the pints for milk. As the Commission rejects amendment 17, also amendments 18 and 19 should be rejected.

Amendments 21, 22, 23, 24 and 25 ask to introduce mandatory sizes for five new sectors, for which currently there are no mandatory sizes fixed at the EU level. Some Member States have national ranges, either mandatory or voluntary for home producers. But national law is never applied to products legally manufactured or placed on the market in other Member States. No sound reasons have been forwarded justifying the need to introduce regulation at Community level concerning mandatory nominal quantities for these sectors.

Amendments 26, 27, 28, 29 and 30 concern the definitions of the five new sectors. As the Commission is opposed to fixing mandatory sizes for these sectors, there is no need to define them in the proposal.

Amendment 31 corrects the definition of certain cosmetic products mentioned in point 4 of the Annex that would be exempted from fixed nominal quantities if such products were sold in aerosol dispensers. However, Parliament has abolished the principle of fixed nominal quantities for products sold in aerosol dispensers (Amendments 8, 12 and 13). As a consequence, there is no basis to maintain point 4 in the Annex.

Amendment 32 takes out butter and coffee from amendment 9, but retains the other sectors mentioned in Amendment 9, which remains unacceptable for the Commission.

Amendment 33 adds the two values of 300 and 330 ml, which are used in Sweden, into the range for drinking milk in Amendment 17, which remains unacceptable for the Commission.

#### 4. OTHER PROPOSALS

In the framework of the regulatory review of the vertical harmonization directives on soluble coffee and white sugar at the end of the 1990-ies, the Commission proposed to abolish existing ranges of nominal quantities, but Parliament was opposed. In conciliation, the vertical directives were finally modified, with the Commission accepting to propose nominal quantities for these products in the horizontal legislation on nominal quantities for prepacked products. Consequently, when in 2004 the Commission introduced its current proposal, proposing to abolish regulation of nominal quantities, it made an exception for these products.

The commitment of the Commission concerned also the soluble chicory but in the meantime this sector has requested not to have mandatory nominal quantities.

A survey by the Commission services in December 2005 shows that a majority of Member States no longer have regulation or no longer enforce existing national regulation for these sectors. In the absence of strong reasons pleading for reintroduction of mandatory nominal quantities for these products, and in line with the new policy emphasis on simplification and better regulations, the Commission proposes to eliminate point 2 from the Annex and to suppress accordingly the definitions of “white sugar” and “soluble coffee” in point 3 of the Annex. Consequently, point 3 of the Annex becomes the new point 2.

#### 5. AMENDED PROPOSAL

Having regard to Article 250(2) of the EC Treaty, The Commission amends its proposal as indicated above.