Opinion of the European Economic and Social Committee on the 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

(COM(2004) 708 final — 2004/0248 (COD))

(2005/C 255/06)

On 20 December 2004, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned communication.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 16 March 2005. The Rapporteur was Ms Sharma.

At its 416th plenary session (meeting of 6 April 2005), the European Economic and Social Committee adopted the following opinion by 104 votes to 1, with 5 abstentions.

1. **Introduction**

1.1 The first Community legislation for ranges of sizes for pre-packaged products ([1]) dates from 1975. It includes regulation for both metrological requirements ([2]) and ranges of sizes for liquids. 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 legislation ([3]):

> *'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 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 markets 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.'*

2. **Background**

2.1 In the 1960s, with the start of the European Community, different national rules on nominal quantities ([4]) of pre-packaged products (pack/bottle sizes) were seen as a major barrier for the free movement of goods between the Member States. Hence, these sizes were harmonised by means of Community rules.

2.2 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. Harmonising regulation was therefore of an 'optional nature': Member States adopted the Community rules, but were allowed to maintain existing national rules for their national markets. Only products conforming to the Community rules would benefit from free circulation.

2.3 However, for some products (e.g. wine, spirits) total harmonisation was introduced. Community sizes became mandatory for all operators in these product areas and all national sizes were abolished.

2.4 Over the past decades, huge changes have occurred in packaging — demographic changes, households have decreased in numbers, consumption of individual portions has increased and more wealth and consumer sophistication has led to increased demands for an enormous variety of packages and products. Additionally, super- and hypermarkets have grown to be the most important outlets to consumers, and through consumer demands for change, industry is pressurised to become increasingly innovative and competitive in a global market.

([1]) Pre-pack: a pack for distribution to the final consumer.

([2]) Metrological requirements concern the control of the quantity contained in a pre-packed product in order to ensure that consumers indeed get the quantity that is indicated on the package.

([3]) COM(2000) 56 final, pp 9-11 and 21-22

([4]) The nominal quantity (nominal weight or nominal volume) of the contents of a prepackage is the weight or volume indicated on the prepackage, i.e. the quantity of product which the prepackage is deemed to contain. The actual contents of the prepackage are the quantity (weight or volume) of product which it in fact contains. (Council Directive 76/211/EEC; OJ L 46, 21/02/1976)

2.5 Elements that used to be covered by the prepackaged sizes legislation have now been consolidated in new legal instruments of consumer protection. This consumer protection legislation is designed to prohibit unfair business-to-consumer practices and has developed, in the main, a coherent and sufficient system of information to consumers by means of labelling and price per unit comparisons and hence the current prepackaged sizes legislation is being seen as counter productive.

2.6 Under the framework of the SLIM-IV exercise, members designated by Member States and representatives of stakeholders identified by the Commission were requested to review and advise on pack sizes legislation. This need for review was subsequently reinforced when the European Court ruled in the Cidrerie-Ruwet case ([5]) that the 'Cassis de Dijon jurisprudence' applied, stating that Member States must accept on their market products legally produced and marketed in another Member State unless there are overriding requirements of a public nature. The Court suggested that this would hardly be the case for pack sizes.

2.7 Recommendations from the review produced a working document on which between 8 November 2002 and 31 January 2003, the Enterprise DG held a public Internet consultation in 11 languages with consumers, producers and retailers. An impact assessment was subsequently produced and a new directive laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC ([6]) and 80/232/EEC ([7]), and amending Council Directive 76/211/EEC ([8]) has been established.

2.8 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 Directive of the EP and of the Council concerning unfair business-to-consumer commercial practices on the Internal market, Directive 98/6EC on consumer protection on the indication of the prices of products offered to consumers (price per kilo/litre):unit prices, which are mandatory for all products in supermarkets.

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

([6]) 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

([7]) 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 prepackaged products

([8]) 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

3. **Objectives**

3.1 The new directive removes the regulation of sizes and prevents Member States from imposing their own legislation on their national markets that differs from the Community rules. The only exceptions (excluding very small and bulk quantities) are the Community rules which are now set for Wines and Spirits, White Sugar, and Soluble Coffee. Aerosols are an additional exception and will remain under the current legislation for consumer protection under the health and safety regulations. However, aerosols will be regulated under a new directive currently under review, following which they will be removed from the nominal packaging directive.

3.2 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.

3.3 The proposal aims to:

— promote competitiveness in line with enterprise policy by encouraging entrepreneurship, product and process innovation;

— facilitate access to markets by taking away potential obstacles to competitiveness on the Internal Market;

— remove discrimination for national sizes from domestic packers who are facing competition on the home market from different sizes in which they are not allowed to pack;

— benefit small and medium sized enterprises –cost reduction through the creation of economies of scale for production, both for home consumption and for exports;

— continue the high level of consumer protection legislation which prohibits unfair business-to-consumer practices;

— provide better choice for consumers as producers can respond immediately to changes in consumer tastes and demands, together with accommodating the needs of retailers requirements of optimising shelf space;

— ensure 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. This approach is in line with the European Court of Justice, which considers the 'average consumer, reasonably well informed and reasonably observant and circumspect' as a reference.

3.4 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.

3.5 To allow industry to adapt to deregulation, and taking into consideration average investment cycles for packaging equipment, a time limitation of 20 years has been allocated for deregulation to take place.

4. **Specific comments**

4.1 Nominal pre packed quantities, where nominal refers to the declaration of volume specified, and quantity to the actual volume enclosed, are those determined only by the contents quantity sizes of the containers/packaging. The Committee welcomes the imminent review of the metrological quantity (control of contents enclosed) as a major priority for consumer and European industry protection.

4.2 The EESC praises the Commission for its public consultation and dialogue with stakeholders and notes that it has taken account of various sectors, including wines and spirits, sugar, coffee. The need to create greater competitiveness and innovation for European industry is essential for growth and the SLIM- IV exercise aids this priority.

4.2.1 The CEPS (European Spirits Organisation) has made separate comment to the Commission and highlights further, consumer protection issues, unit pricing and the potential abolition in 20 year time of mandatory spirits legislation, rightly pointing out that the legislation concerning the latter should be reviewed prior to the 20 year time frame.

4.3 Reference should be clearly made within the directive to a maximum volume capacity of mineral water of 10 litres. Beyond this volume there is evidence to suggest that the quality of mineral water could begin to deteriorate and may present a health risk to consumers.

4.4 The new directive allows for greater potential for innovation, market research and development opportunities creating wider choice and variety for consumers.

4.5 However, note should be taken that unit pricing does not appear to be universal across Europe and often appears in small print on shelf labelling. The unit pricing font size declaration is set at national level and in many cases is still not clear for consumers. This will not ease the problems for blind, poor sighted, illiterate or non-native speaking citizens, particularly those who are accustomed to buying the same size standard product.

4.6 The consumer organisations have pointed out that some consumers can be confused by excessive variations in packaging sizing and by packaging that may not qualify as deceptive but still gives the impression of greater contents. Clear and legible packaging labelling, including the 'on shelf unit pricing' and pack size, together with continued monitoring of deceptive packaging legislation, will overcome this issue. Greater emphasis should also be placed on immediate action where consumer protection legislation is breached or absent. These issues need to be more clearly emphasised in the directive, and further considered under the metrological review.

4.7 There is a strong fear from consumer organisations that free sizing will allow for price increases to be imposed on products more easily under the guise of new packaging sizes, in a similar way to the introduction of the Euro (Eurozone) and the change to metric sizing (UK). The Committee would therefore request that, as part of the internal monitoring procedures, product size changes are referenced to any unit product price changes when statistical data is collected.

4.8 Whilst the directive is not impacted by current environmental legislation, it is probable that with an increase in smaller sizes the volumes of packaging will increase, resulting in greater amounts of packaging waste.

4.9 It is imperative that the aims of the Packaging/Packaging Waste directive (PPW) are achieved, regardless of whether sizes are regulated or not. This message must be repeated to all Member States and industry, together with a clear communication to consumers to demand less packaging from the retailers.

Brussels, 6 April 2005

The President

of the European Economic and Social Committee

Anne-Marie SIGMUND