

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 455 final.

Brussels, 30 September 1977.

Proposal for a Council Directive
amending Directive 75/106/EEC
on the approximation of the laws of the Member States
relating to

the MAKING-UP BY VOLUME OF CERTAIN PREPACKAGED LIQUIDS

(presented by the Commission to the Council)

COM(77) 455 final.

EXPLANATORY MEMORANDUM

This directive is prepared in pursuance of Article 100 of the Treaty establishing the European Economic Community. It follows on from Council Directive 71/316/EEC 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.

At the time of the adoption of 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 prepackaged liquids² the Council felt that, although the main aim of the directive was to remove technical barriers to intra-Community trade existing at the time in the field of prepackaged liquid foodstuffs, while ensuring consumer protection, fairness of competition and knowledge of the market, the list of nominal volumes in Annex III was still too long.

This opinion was in fact included in the Council minutes, in which it was stated that :

- the Council invited the Commission to present, before 31 December 1980, a new proposal for the list of nominal volumes given in Annex III to the Directive with the specific aim of reducing the number of permitted nominal volumes in order to improve consumer protection. In particular, wherever the present list included, for the same category of liquids, values which were too close to one another, the Commission should endeavour, taking into account developments in international trade, to adopt only one of these values in its proposal.

The Commission has anticipated the deadline fixed by the Council for presenting such a proposal, in the form of this directive, for several reasons :

First, it was clear that Council Directive 75/106/EEC was not wholly satisfactory because in several cases the retention of several similar values could lead to confusion with harmful consequences.

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¹ OJ of the European Communities, L 202 of 6 September 1971, p 1

² OJ of the European Communities, L 42 of 15 February 1975, p 1

Since all parties concerned were aware of the need to make further reduction in the number of permitted volumes (as far back as 1975, some Member States requested the Commission to take steps to this effect) it was felt that the proposal should be presented as soon as a study of developments in commercial practices had been carried out which would provide a suitable indication of the choices to be made.

This has now been achieved to a large extent. Both in the Community and in non-member countries, particularly in those at present moving towards the SI system of international units, the situation as regards several liquids is much clearer and the trends far more distinct than they were three years ago.

This is especially the case with wines, on which there has been an agreement between the wine producers and governments for the elimination of the 70 cl and 35 cl bottles over the long term and their replacement by 75 cl and 37.5 cl bottles.

Specifically in the case of wines, it is interesting to add that, in fact, the trend in the Community is towards complete harmonization. A decision to this effect was taken by the Management Committee for Wine and adopted by the Commission in its Regulation (EEC) N° 1054/77 of 13 May 1977 amending Regulation (EEC) 1608/76 laying down detailed rules for the description and presentation of wines and grape musts¹.

Although this choice is a binding one, it will be attenuated by a fairly long period of transition - which will enable producers to continue to sell products previously put up in volumes of 70 cl and 35 cl. In this way the market in these quantities will not be disturbed and there will be a gradual transition to 75 cl.

It was more difficult to solve the problem of spirits. A few years ago, some producers changed from 75 centilitres to 70 centilitres since this was the traditional quantity for other products and, in view of the high price of the products in question, such producers are naturally most reluctant to give up this nominal volume.

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¹ OJ of the European Communities, L 130 of 25.5.1977, p 1

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Some government experts share this opinion. However, it must be said that far larger quantities of spirits on the Community market are put up in 75 centilitres than in 70 centilitres, and that this situation is even more pronounced on the world market. By way of example, one might quote the decision taken by the United States, as part of the move towards the SI system of units, to adopt 75 centilitres for spirits rather than 70 centilitres. This is to be compulsorily applied in the United States over the next few years.

In view of this market trend it was difficult to abolish the 75 cl nominal volume in favour of 70 cl. It was even less rational to allow the two values to remain on the market indefinitely as this would perpetuate the existing confusion. It would also have been very complicated to try to make a distinction between products sold in 75 cl amounts and those in 70 cl amounts because the nominal volumes generally put on the market at present reflect local habits which may vary from one Member State to another for very similar products. Moreover, all spirits are directly competitive with one another and it would not seem logical to separate them arbitrarily into two categories.

Here again, the Commission has proposed that 75 centilitres should be the nominal volume finally adopted although products put up in 70 centilitres should nevertheless have the benefit of a long transitional period in order that producers should not be taken unawares by the sudden disappearance of a popularly employed quantity.

The evidence is that this option corresponds to the general trend in international trade and that any other decision would have engendered serious difficulties for European producers of products put up in 70 centilitres, who would have found themselves at variance with the rest of the world.

Finally, almost all the government experts regretted the Council decision taken in 1974 during the closing stages of the work on this proposal, to permit mineral waters and non-alcoholic beverages to be put up in values below 20 or 25 centilitres. In their opinion, this proliferation of quantities is contrary to consumer interests and it would be illogical to argue in favour of their retention at European level, at the risk of jeopardizing one of the main aims of this directive.

In the opinion of these experts and of the Commission, if a Member State wished to maintain these values on its territory, for reasons of national interest or because of consumer preferences, the optional nature of the directive would enable it so to do. As in the preceding cases, however, a period of transition would have to be arranged in order to enable stocks of bottles to be disposed of and to cover depreciation of the bottle filling plant.

Thus generally speaking, the directive does not alter the principles adopted by the Council in 1974 as regards packing (The "average" principle, tolerable negative error) and checking (statistical checking) as described in Annexes I and II to Directive 75/106/EEC but rather reduces the number of nominal volumes which may not be refused within the Community.

As in the case of the preceding directive, the Commission sought the advice of the most authoritative sources when preparing the new legislation. It consulted most of the industries concerned through the European trade associations, committees or groups. The Commission departments responsible for consumer protection were closely associated with the work, as were the various bodies which represent consumer interests.

In view of the importance of the products concerned, the number of prepackages covered by the directive, amounting to several thousand millions of bottles, the customs and practices of producers, traders and consumers, it is clear that this directive did not secure the unanimous agreement of the parties concerned.

However, a large majority agreed in principle on each of the items proposed. This is because the Commission while retaining the optional character in this proposal for a directive, felt it necessary to extend the transitional period allowed for in Directive 75/106/EEC by a further period to end in 1982.

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These transitional periods cover both the prepackages already listed in column II of Annex III to the Council Directive of 1974 and those which, since they are too close to other nominal volumes, should be abolished by 1982, this date being extended to 1988 in some special cases.

In this way, the essential aims of this directive will have been achieved without any major upheavals being caused in the industries concerned. While aware of what is being demanded of them, the Commission feels that this directive should afford knowledge of the market which will benefit both producers and consumers.

The reduction in nominal volumes as required by the Council, should help to reduce production costs and should facilitate the consumers' choice of products offered on the market.

PROPOSAL FOR A COUNCIL DIRECTIVE

amending Directive 75/106/EEC

on the approximation of the laws of the Member States
relating to the MAKING-UP BY VOLUME OF CERTAIN PREPACKAGED LIQUIDS

(presented by the Commission to the Council)

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 Parliament¹,

Having regard to the opinion of the Economic and Social Committee²,

Whereas the field of application of 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 prepackaged
products⁽³⁾ is different from that of 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 prepackaged liquids; (4)

Whereas, therefore, the field of application of the two Directives should
be aligned as regards the volumes of the prepackages to which they
relate;

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¹ OJ N° C

² OJ N° C

³ OJ N° L 46, 21.2.1976, p. 1.

⁴ OJ N° L 42, 15.2.1975, p.1.

Whereas at the time of the adoption of Directive 75/106/EEC on the making-up by volume of certain prepackaged liquids the Council, with a view to providing better protection for the consumer, requested the Commission to present before 31 December 1980 a new proposal reducing the list of nominal volumes in Annex III by eliminating values that were too close to one another;

Whereas Council Directive 71/354/EEC of 18 October 1971 relating to the approximation of the laws of the Member States on units of measurement (5) has been amended by Council Directive 76/770/EEC of 27 July 1976 (6);

Whereas pursuant to Article 7 (2) of the Council Directive of 19 December 1974 Belgium, Ireland, the Netherlands and the United Kingdom have five years in which to implement that Directive and whereas this Directive should therefore take account of that time-factor;

Whereas certain Member States will find it difficult to reduce the number of nominal volumes; whereas, therefore, provision should be made for a transitional period for these Member States which does not, however, impede intra-Community trade in the products in question or jeopardize implementation of this Directive in the other Member States,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Article 1 of Directive 75/106/EEC is replaced by the following text :

" Article 1

This Directive relates to prepackages containing the liquid products listed in Annex III measured by volume for the purpose of sale in individual quantities of between 0.05 litre and 10 litres inclusive. "

(5) OJ N° (see p. 3)

(6) OJ N°

Article 2

Annex III to Directive 75/106/EEC is replaced by the Annex to this Directive.

Article 3

1. Article 4 (3) of Directive 75/106/EEC is replaced by the following text :

" 3. Until the expiry of the periods laid down in Council Directive 71/354/EEC of 18 October 1971 on the approximation of the laws of the Member States relating to units of measurement¹, as last amended by Council Directive 76/770/EEC of 27 July 1976², the indication of the nominal volume expressed in SI units of measurement in accordance with subsection 3.1. of Annex I to this Directive shall, if the United Kingdom or Ireland so desire, and on their national territories, be accompanied by an indication of the nominal volume expressed in the equivalent imperial units of measurement, if they are given in Annex I to this Directive. "

2. The second paragraph of subsection 3.1. of Annex I to Directive 75/106/EEC is replaced by the following text :

" Until the expiry of the periods laid down in Council Directive 71/354/EEC of 18 October 1971, as last amended by Council Directive 76/770/EEC of 27 July 1976, the indication of the nominal volume of the contents expressed in SI units in accordance with the preceding paragraph may be accompanied by that of the equivalent value in imperial (UK) units of measurement, calculated on the basis of the following conversion factors :

one millilitre = 0.0352 fluid ounces

one litre = 1.760 pints or 0.220 gallons. "

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¹ OJ N° L 243, 29.10.1971, p 29

² OJ N° L 262, 27.09.1976, p 204

- 4 -

Article 4

Article 5 of Directive 75/106/EEC is replaced by the following text :

" Article 5

1. Member States may not refuse, prohibit or restrict the placing on the market of prepackages which satisfy the requirements and tests laid down in this Directive for reasons concerning the volume of the contents, the determination of such volume or the methods by which it has been checked.

2. However :
 - a) with respect to prepackages with the nominal volumes listed in Annex III, column II, the first paragraph of this Article shall apply only to those countries which allowed such prepackages on 31 December 1973 and only until 31 December 1980, with the exception of the volumes specified in Section 8 (a), for which this period is extended until 31 December 1988.

 - b) for prepackages with the nominal volumes listed in Annex III, column III, the first paragraph of this Article shall apply only to those countries which allowed such prepackages on 31 December 1973 and only until 31 December 1982, with the exception of the volumes specified in Section 8 (a), for until this period is extended until 31 December 1988.

 - c) with respect to the liquids specified in Sections 1 (a), 1 (b) and 4 of Annex III, paragraph 1 of this Article shall apply only when such liquids are presented in packages having one of the nominal volumes listed in the corresponding columns of that Annex and complying with the rules or trade practices of the Member State of origin of the liquid, regardless of whether filling took place in the Member State of origin or in another State. "

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Article 5

1. Member States shall adopt and publish before 1 January 1981 the laws, regulations and administrative provisions needed to comply with this Directive and these shall enter into force on 1 January 1981.
2. However, if Belgium, Ireland, the Netherlands or the United Kingdom implement the provisions of Council Directive 75/106/EEC of 19 December 1974 after the date fixed in the preceding paragraph, the provisions of this Directive shall take effect at the same time as those provisions.
3. Following notification of this Directive, Member States shall ensure that the Commission is informed, in good time for it to present its comments, of any laws, regulations or administrative provisions that they propose to adopt in the field covered by the Directive.

Article 6

This Directive is addressed to the Member States.

A N N E X

Liquids	Nominal volume of contents in litres		
	I definitively allowed	II temporarily allowed	III temporarily allowed
1. a) Wine of fresh grapes; grape must with fermentation arrested by the addition of alcohol (CCT subheading 22.05 C) except for liqueur wines	0.10 - 0.25 - 0.375 - 0.50 - 0.75 - 1 - 1.5 - 2 - 5	0.20 - 0.36 - 0.475 - 0.60 - 0.68 - 0.72 - 0.95 - 1.75 - 1.88	0.35 - 0.70
b). Other fermented non-sparkling beverages (for example, cider, perry and mead)(CCT subheading 22.07 B II)	0.10 - 0.25 - 0.375 - 0.50 - 0.75 - 1 - 1.5 - 2 - 5	0.20 - 0.33 - 0.36 - 0.72	0.35 - 0.70
c) Vermouths and other flavoured wines of fresh grapes (CCT heading n° 22.06); liqueur wines (CCT subheading 22.05 C)	0.05 - 0.10 - 0.375 - 0.50 - 0.75 - 1 - 1.5	0.20 - 0.35 - 0.36 - 0.68 - 0.70 - 0.72 -	
2. a) - Sparkling wines (CCT subheading 22.05 A) - Other wines bottled under pressure (CCT subheading 22.05 B)	0.10 - 0.20 - 0.375 - 0.75 1.5 - 3	0.57 - 0.77 -	0.125
b) Other fermented sparkling beverages (for example, cider, perry and mead)(CCT subheading 22.07 B 1)	0.10 - 0.20 0.375 - 0.75 1 - 1.5 3	0.57 - 0.77 -	0.125

Liquids	Nominal volume of contents in litres		
	I definitively allowed	II temporarily allowed	III temporarily allowed
3. Beer made from malt (CCT heading N° 22.03) - acid beers, gueuze	0.25 - 0.33 - 0.50 - 0.75 - 1 - 2 - 3 - 4 - 5 0.375	0.18 (in cans only) - 0.20 - 0.30 - 0.35 (in cans only) 0.45 - 0.66 - 3.8	
4. Spirituous beverages (CCT subheading 22.09 C)	0.05 - 0.10 - 0.20 - 0.375 - 0.50 - 0.75 - 1 - 1.5 - 2 - 2.5 - 3	0.25 - 0.36 - 0.60 - 0.72	0.35 - 0.70
5. Vinegar and substitutes for vinegar (CCT heading N° 22.10)	0.25 - 0.50 - 0.75 - 1 - 2 - 5	0.35 - 0.70 - 1.5 - 2.5	
6. Edible oils (CCT subheadings 15.07 A and 15.07 D II)	0.10 - 0.25 - 0.50 - 1 - 2 - 3 - 5	0.375 - 0.625 - 0.75 - 1.5 - 2.5	
7. Milk and milk- based beverages sold by volume (CCT heading n° 04.01 excluding yoghurt and kephir, CCT subheading 22.02 B)	0.10 - 0.25 - 0.50 - 0.75 - 1 - 2 - 3 - 4	0.22 - 0.33 - 0.60	0.20

12

Liquids	Nominal volume of contents in litres		
	I definitively allowed	II temporarily allowed	III temporarily allowed
8. a) Waters, including spa waters and aerated waters (CCT heading n° 22.01)	0.125 - 0.25 - 0.33 - 0.50 - 0.75 - 1 - 1.5 - 2	0.35 - 0.45 - 0.47 - 0.90 - 0.94	all volumes below 0.20 - 0.20 - 0.70
b) Lemonade, flavoured spa waters and flavoured aerated waters and other non-alcoholic beverages containing neither milk nor milkfats, excluding fruit and vegetable juices (CCT subheading 22.02 A)	0.125 - 0.25 - 0.33 - 0.50 - 0.75 - 1 - 1.5 - 2 - 3 - 4 5	0.35 - 0.45 - 0.47 - 0.60 - 0.90 - 0.94	all volumes below 0.20 - 0.20 - 0.70
9. Non-concentrated fruit juices and vegetable juices, whether or not containing added sugar, but unfermented and not containing spirit (CCT subheading n° 20.07)	0.125 - 0.25 - 0.33 - 0.50 - 0.75 - 1 - 1.5 - 2 - 3 - 4 - 5	0.18 - 0.35 - (in cans only)	all volumes below 0.125 - 0.20 - 0.70