

Regulations against deceptive prepackages

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Regulations against deceptive prepackages

It is in the nature of people that they buy products not only by reference to the quantity declaration on the prepackages, but also by reference to the outer shape and size of those prepackages.

Unit prices is just one of the means for protecting consumers.

Studies ordered by the European Commission show that, in general, the *unit price* information is neither used nor understood by consumers.

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Package volume 12 mL for 1 g !

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Somat Reiniger Pulver für die Geschirrmaschine



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Prize question

Quantity is reduced by 25 %.

Product will be offered for the same price.

How much % is the price increased?

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OIML R79 Edition 1997 “Labelling requirements for prepackaged products”

6 Misleading practices

- 6.1 Fill level: Packages shall be filled in such a manner that a purchaser may not reasonably be misled with respect to the quantity or identity of the product it contains, taking into consideration any recognized and accepted production practices that may be necessary for the manufacturer or packer.
- 6.2 Package design and display: Packages shall be manufactured, constructed or displayed in such a manner that a purchaser may not reasonably be misled with respect to the quantity or identity of product contained therein.
- 6.3 If the prepackaged product is labelled on more than one location or its package, the information on all labels shall be equivalent and in accordance with the requirements of this Recommendation.

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OIML R 87 Edition 2004 Quantity of product in prepackages

Annex E Prohibition of misleading prepackages (Mandatory)

- E.1 General

A prepackage shall not have a false bottom, sidewalls, lid or covering, nor be constructed or filled, wholly or partially, in such a way that may deceive the consumer.

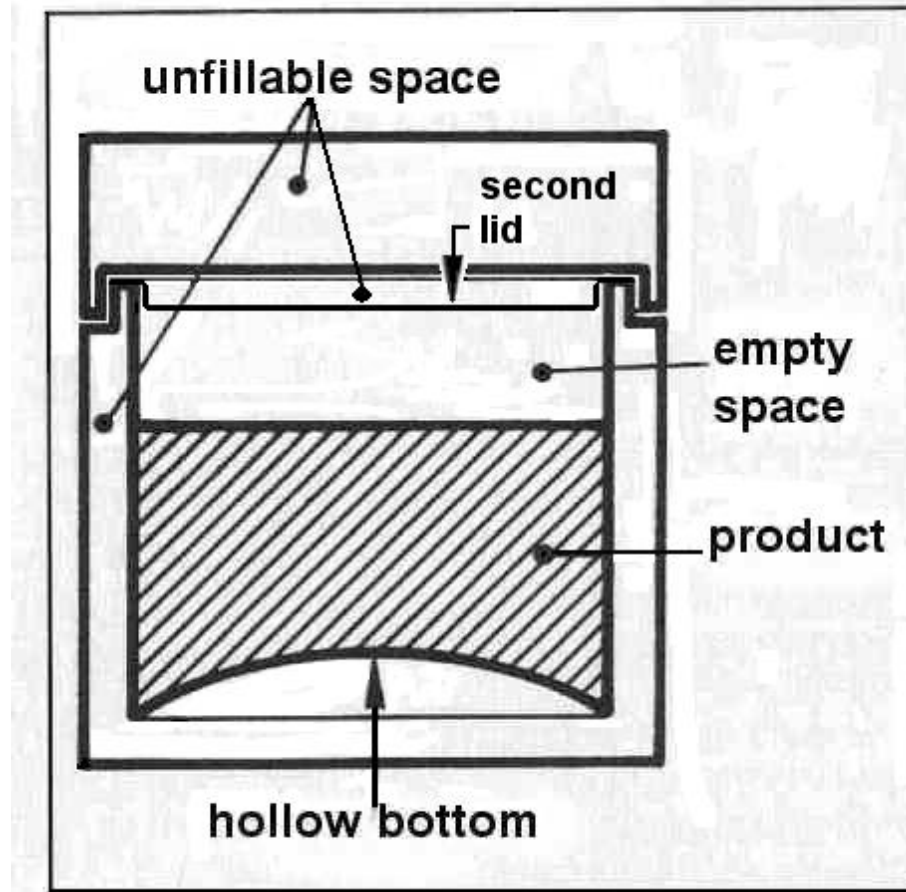
- E.2 Terminology

E.2.1 Slack fill

Difference between the actual capacity of the packing material and the volume of product it contains. Slack fill may be necessary for the following reasons:

- Protection of the product;
- The requirements of machines used for enclosing the contents of the prepackage;
- Unavoidable product settling during shipping and handling; and
- The need for the prepackage to perform a specific function (e.g. where packaging plays a role in the preparation or consumption of a food), where such a function is inherent to the nature of the product and is clearly communicated to consumers.

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OIML R 87 Annex E Prohibition of misleading prepackages (Mandatory)

- E.2.1 Non-functional slack fill
Empty space in a prepackage when the prepackage is filled to less than its capacity. If a consumer cannot fully view the product in a prepackage, it shall be considered to be filled. A prepackage with excessive non-functional slack fill is considered to be a misleading one.
- E.3 Aerosol dispensers
The percentage (grade) of fill by volume of aerosol dispensers shall be as required in Annex III of European Directive 80/232/EEC [3]. (See also OIML R 79 [4], 6.1–6.3).
See Table E.1 on page 16.

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Regulation (EU) No 1169/2011 on the provision of food information to consumers (ex 2000/13/EC)

- *Article 7*

Fair information practices

1. Food information shall not be misleading, particularly:

(a) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production; .

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DIRECTIVE **2005/29/EC** concerning unfair business-to-consumer commercial practices

(‘Unfair Commercial Practices Directive’)

- *Article 6*

Misleading actions

1. A commercial practice shall be regarded as misleading if it contains false information ...

(b) the main characteristics of the product, ..., **quantity**, ...

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DIRECTIVE 2006/114/EC concerning misleading and comparative advertising

- **Article 3**

In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning:

(a) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, **quantity**, specification, geographical or commercial origin or ...

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DIRECTIVE 94/62/EC on **packaging and packaging waste**

“Article 1 paragraph 2:

- To this end this Directive lays down measures aimed, as a first priority, at preventing the production of packaging waste and, as additional fundamental principles, at reusing packaging, at recycling and other forms of recovering packaging waste and, hence, at reducing the final disposal of such waste.”
- Specific information see e.g. in EN 13428 “Packaging - Requirements specific to manufacturing and composition - Prevention by source reduction” Directive 94/62/EC of 20 December 1994 on packaging and packaging waste

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National Law

- National regulations exist e.g. in Belgium, France, Germany, Slovakia and Switzerland.
- *Remark: In response e.g. to Regulation (EU) No 1169/2011 on the provision of food information*

remember that

“An EC regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.”

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Eichgesetz

- **§ 1 Purpose of the Act**

It is the purpose of this Act

1. to **protect the consumer** when he or she **purchases measurable goods** and services *and*

to provide the prerequisites for reliable measurements in **commercial transactions** in the interest of **fair trade**, ...

- **§ 7 – Requirements on prepackages**

2. **Prepackages may not affect a greater actual content as they contain** (prohibition of deceptive package)

Remark: → Only if the content of the package is smaller than the outer packaging, than it is in the sense of Eichgesetz a deceptive package

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Can with a cap which is open by tilting

Decision of the highest German Court BGH (I ZR 156/79)

Case: Can with a cap which is open by tilting

Ist danach aber davon auszugehen, dass die vom Berufungsgericht festgestellte Täuschungsgefahr nicht nur geringfügig ist, ihr vielmehr nicht unerhebliche Verkehrskreise unterliegen, die angesichts des größeren Behältnisses auch eine entsprechend größere Warenmenge erwarten,

so kann sie nicht allein damit gerechtfertigt werden, dass ... das Behältnis aus technischen Notwendigkeiten überdimensioniert ist.

Das Interesse der Allgemeinheit an der Unterbindung einer Täuschung der Verbraucher verdient insoweit den Vorrang.

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German Act Against Unfair Competition (UWG)

(This Act serves to implement Directives 2005/29/EC & 2006/114/EC)

- Protecting of **competitors** *and* **consumers**
- Unfair commercial practices shall be **illegal**
- **Unfairness** shall have **occurred in particular** where a person ... **infringes a statutory provision** (Rechtsvorschrift)
- Whoever uses an illegal commercial practice can be sued for **elimination**, and in the event of the risk of recurrence, for **cessation and desistance**. (Beseitigung & Unterlassung)

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German Guidelines for the design of prepackages to avoid deceptive packages

- ***General principles for the design of prepackages***
- ***Guidelines for the design of prepackages with cosmetics***
- ***Guidelines for the design of prepackages with chocolats***
- ***Guidelines for the design of prepackages with biscuits***
- ***Guidelines for the design of cups (plastic and carton) for prepackages especially with yoghurt***
- ***General principles for the design of boxes for tubes for prepackages***

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**For detailed information → see copy of
WELMEC WG6 wp6.11 Version1 d3 2009-03-06**

Guidelines for the avoidance of deceptive packages

- General principles for the design of prepackages -