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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

**on the application of the pre-packaging legal framework: Directives 75/107/EEC,
76/211/EEC and 2007/45/EC**

{SWD(2016) 219 final}

1. INTRODUCTION

This report concerns the evaluation of three Directives that make up the legal framework for pre-packaging:

- Directive 75/107/EEC¹ on bottles used as measuring containers, which provides for the free circulation of ‘3-marked’ bottles;
- Directive 76/211/EEC² on making up pre-packaged products by weight or volume, which concerns the quantity indicated on pre-packed products and guarantees the free circulation of ‘e-marked’ pre-packages; and
- Directive 2007/45/EC³ on nominal quantities for pre-packed products, which prohibits Member States from regulating pack/bottle sizes up to 10 l or 10 kg and lays down mandatory EU sizes for wines and spirits; it applies to all pre-packed products.

Article 9(1) of Directive 2007/45/EC requires the Commission to submit a report to the European Parliament, the Council and the European Economic and Social Committee on the application and effects of the Directive. Since the three Directives are closely related, it was decided that this opportunity should be taken to evaluate their functioning and ‘fitness-for-purpose’ as a package under the Commission’s regulatory fitness and performance (REFIT) programme in 2014.⁴

Directive 75/107/EEC has never been evaluated. Directive 76/211/EEC was evaluated in 2005. Directive 2007/45/EC was adopted following the evaluation of Directives 75/106/EEC and 80/232/EEC, which it repealed.

2. MARKET SIZE

Pre-packaging accounts for an estimated EUR 170 billion in turnover and around EUR 34 billion in added value across the EU. This represents 12 % of total added value in the main sectors in which it takes place (food and beverages, pet food, chemicals, paints and fertilisers, detergents, cosmetics and glass bottle manufacture), the equivalent of 0.3 % of EU GDP. There are about 300 000 companies in these sectors, most of which are small and medium-sized enterprises (SMEs) with an average of 17.7 employees each. Within these sectors, an estimated 640 000 people are employed full-time in pre-packaging; this accounts for 0.3 % of EU employment.

¹ Council Directive 75/107/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to bottles used as measuring containers.

² 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 Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC.

⁴ COM(2014) 368 and SWD(2014) 192.

3. DIRECTIVES EVALUATED

The three Directives are aimed at enabling the free circulation of pre-packed products, thus contributing to market growth and the competitiveness of EU industry. Coordinated market surveillance ensures that purchasers receive the quantity indicated on the package, thus contributing to consumer welfare. Deregulation of sizes has improved consumer choice, while the exception of fixed EU packaging sizes for wine and spirit drinks protects SMEs from excessive demand for other bottle sizes, thereby improving competition.

Directive 75/107/EEC concerns measuring container bottles for (alcoholic) drinks. It involves ‘optional harmonisation’, i.e. manufacturers can choose whether or not to apply it. It requires manufacturers to register in advance with the authorities, lays down obligations as regards precision and marking and provides market surveillance authorities with a statistical procedure for testing bottle content. It guarantees the free circulation of bottles marked with the ‘reverse epsilon’ mark (3-mark) and is widely used for glass bottles and jars.

Directive 76/211/EEC concerns the quantities indicated on pre-packed products that are made up without the consumer being present. It also involves ‘optional harmonisation’, as the packer/importer chooses whether or not to apply it. It lays down obligations as regards precision and marking, and provides market surveillance authorities with a statistical procedure for testing the quantity in pre-packs. It guarantees the free circulation of ‘e-marked’ pre-packages and is widely used for packs and bottles sold in supermarkets and do-it-yourself shops.

Directive 2007/45/EC prohibits Member States from regulating pack/bottle sizes up to 10 l or 10 kg and lays down mandatory EU sizes for commonly sold volumes of wines and spirits. A period for phasing out national provisions on pack/bottle sizes for certain products ended in 2013.

4. EVALUATION

The Commission took on an external contractor to evaluate the functioning of the Directives, who produced a study⁵ on the basis of:

- interviews with a wide range of stakeholders (consumer organisations, industry associations and national authorities);
- an online public consultation;
- a targeted survey of individual consumers, firms and experts; and
- desk research.

The evaluation used the Commission’s standard evaluation criteria: effectiveness, efficiency, coherence, relevance and EU added value.

⁵ [http://ec.europa.eu/growth/single-market/goods/building-blocks/legal-metrology/index_en.htm]

The accompanying staff working document⁶ builds on the consultant's assessment and finds that the current legal framework enjoys broad support in the industry and among national authorities and is acceptable to consumers. The Directives support the internal market, because they foster competition in the pre-packaging industry by providing a comprehensive legal framework and a basis for administrative cooperation. They have increased trust between market surveillance authorities.

The fact that using (3-mark) measurement containers and fixed volume (e-mark) pre-packages is voluntary means that firms can choose what is most appropriate for their needs. Many small enterprises producing mainly for their home market value the mutual recognition that comes into play where the Directives are not used.

The mandatory nature of the pack-sizes Directive guarantees freedom of choice and has led to a diversification of pack sizes. For wines and spirits, fixed EU sizes have protected SMEs that lack market power. The phasing-out of national provisions did not cause problems.

All Member States have transposed and fully implement the Directives. Differences in national implementation are publicly documented; these concern administrative and production control processes that do not lead to different outcomes as regards the harmonised products placed on the market.

The evaluation showed that all three Directives continue to be relevant and are generally considered efficient and effective, with significant added value for all stakeholder groups (consumers, industry and national authorities). None of them entails significant administrative or compliance costs. They are perceived as beneficial in terms of contributing to consumer protection, fostering competitiveness and supporting the single market. They are also coherent with, and complement, other EU and national legislation. As a result, they enjoy widespread support from all stakeholder groups. The Commission concurs with the consultant's conclusion that the Directives are fit for purpose and do not require fundamental reform.

Alongside this favourable overall assessment, a number of technical, sector-specific issues have been raised as regards products sold by length, area or number, drained weight, larger batch definitions, provisions on the speed of production and sampling, viscose products in mass or volume, and wrappings included with pre-packages. Some of these fall outside the scope of the Directives and others remain unresolved internationally.

5. CONCLUSION AND FOLLOW-UP

The evaluation has demonstrated that the EU legal framework for pre-packaging is fit for purpose and that the Directives are effective, efficient, relevant, coherent with other EU policies and have EU added value. While the Commission considers that there is no need to propose amendments, it will discuss the results of the evaluation with stakeholders and follow them up in order to improve application of the Directives.

⁶ [SWD 2016/219].

In the light of the variations in national implementation, the Commission will also seek to promote the exchange of good practice between stakeholders and develop guidance.

In order to promote the effectiveness of market surveillance, in particular on imports, administrative cooperation on the Directives will be enhanced through EU financial support for meetings of the competent authorities in line with Regulation (EC) No 765/2008.

The Commission will discuss with stakeholders the issues raised as regards technical aspects and relevant international standards, and take appropriate action, e.g. develop guidance.

In order to raise consumers' awareness, the Commission will provide more information on the meaning of the 3-mark and the e-mark.