



BIML 08 N° 425/WK

2008-10-09

To : CIML-Members and OIML Corresponding Members
of European Union Member States

Subject: Proposed EU Regulation on Food information to consumers

The European Council and the European Parliament are currently discussing a proposal from the European Commission for an EU Regulation on the provision of food information to consumers (document reference: COM(2008) 40 final, dated 30.01.2008) ¹.

Article 24 and Annex VIII of that proposed Regulation contain requirements relating to the issue of the declaration of the quantity of food in prepackages, the definition of 'quantity of food' and technical rules for their application. As far as the definitions and the determination of the quantity of product in prepackages are concerned, this issue is in the scope of OIML Recommendation 87 *Quantity of product in prepackages* (OIML R 87:2004).

Article 24 and Annex VIII of the European Commission proposal do not take account of the amendments in the 2004 edition of OIML R 87 with respect to the definition of "quantity of product". Instead, the proposal is based on the Codex Alimentarius general standard on Food Labelling ² which still uses the terminology from the previous version of OIML R 87 ('net content' instead of: quantity of product).

A practical consequence of the amended definitions in OIML R 87 relates to the declaration of the quantity of product in prepackages in cases where a solid food is packed together with a liquid medium that is not an ingredient of the food. If the liquid medium is not intended for consumption, it is considered as packing material and should not be part of the quantity that is declared as the quantity of product, as is often interpreted in legislation when implementing the previous version of OIML R 87 and the current version of Codex STAN-1 ³. In the case where the added liquid medium is not an ingredient of the product, but is nevertheless suitable for consumption, this liquid medium could be considered as a separate product and its quantity could be declared separately.

Members of OIML have an obligation to implement OIML Recommendations to the extent possible. Moreover, signatories to the WTO/TBT Agreement (members of the WTO/TBT Committee) are obliged to base their national legislation on international standards. Under the terms of the WTO/TBT Agreement, OIML is considered an international standards setting organization and OIML Recommendations are considered international standards (model regulations).

Codex Alimentarius standards are also international standards. The issue here is therefore a discrepancy between an OIML Recommendation and a Codex standard. The BIML has contacted the Codex Alimentarius Commission and the Codex Committee for Food Labelling in order to establish a working relationship aiming to identify overlap of provisions, resolve discrepancies between OIML Recommendations and Codex standards where these exist and to avoid conflicting provisions in the future.

¹ Download at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0040:FIN:EN:PDF>

² Codex STAN-1:1985 - Download at: http://www.codexalimentarius.net/web/standard_list.do?lang=en

³ It is interpreted such that the 'net content' of a prepackage includes the liquid medium and that this 'net content' is declared on the prepackage. In addition, a declaration of the 'drained weight' is often required, but this may be confusing for consumers, e.g. because the price per unit of quantity would relate to the 'net content' and not to the 'drained weight'.


In the discussions with Codex Alimentarius, the BIML takes the position that the issue of “quantity of product in prepackages” is a metrological issue and should therefore be dealt with by OIML.

Consequently, the proposed EU Regulation should take account of the current (2004) edition of OIML R 87 and be amended accordingly.

The BIML has submitted a proposal to amend the proposed EU Regulation in line with OIML R 87 to the European Commission and the European Parliament. This document is reproduced in the annex for your information.

I would like to invite you, as the representative of the OIML in your country, to contact the appropriate officials in your government that are responsible for the legislation on the provision of food information to consumers (in particular the persons that represent your country in the European Council working group that currently discusses the proposal) and to inform them of the OIML position.

Should you require further information or explanation of the above, please do not hesitate to contact me.

A handwritten signature in black ink that reads "Willem Koool". The signature is written in a cursive style with a long horizontal stroke at the bottom that ends in an arrowhead pointing to the right.

Willem KOOL
BIML Assistant Director

Annex



Proposal

**to amend the CEC Proposal for a Regulation of the European Parliament and of the Council on
the provision of food information to consumers**

COM(2008)40final

(28.03.2008)

Willem KOOL
BIML Assistant Director

1. Introduction

The OIML has published two Recommendations relevant to the labeling of prepackaged foods:

- OIML R 87:2004: Quantity of product in prepackages, and
- OIML R 79:1997: Labeling requirements for prepackaged products.

OIML R 87 specifies:

- legal metrology requirements for prepackages labeled in predetermined constant nominal quantities of weight, volume, linear measure, area or count, and
- sampling plans and procedures for use by legal metrology officials in verifying the quantity of product in prepackages.

Informative annexes include an examination procedure outline, procedures for determining average tare weight, the drained quantity of products in liquid medium, and the actual quantity of frozen products. Also included is a mandatory annex on misleading prepackages.

OIML R 79 specifies requirements for the labeling of prepackages with respect to

- the identity of the product;
- the name and place of business of the manufacturer, packer, distributor, importer or retailer, and
- the quantity of product.

OIML R79 is currently under review for amendment.

A revision of R 87, published in 2004, has brought more clarity with respect to two issues that are relevant to the proposed Regulation of the European Parliament and of the Council on the provision of food information to consumers (COM(2008)40final):

- the definition of the content (quantity of food) of a prepackage and the fact that the word 'net' as in 'net content', or 'net quantity' is superfluous;
- the declaration of 'drained quantity'.

Many economies in the world have implemented or are in the process of implementing OIML R 87 requirements in their national legislation.

2. The definition of 'content'

OIML R 87 defines a prepackage as the combination of a product and the packing material in which it is packed. To differentiate between product and packing material, it proved easier to define 'packing material' as 'everything intended to be left over after use of the product'.

The 'content' is the quantity of product (food) in the prepackage. "Quantity of product" (quantity of food) is the preferred term and may be qualified by 'actual', 'average', or 'nominal'. Since 'quantity of product' in a prepackage is always net of packing material, the qualifier 'net' is superfluous and should be avoided.

3. Drained quantity (drained weight)

Food products in prepackages are often packed with a liquid medium that is not an ingredient of the product, but may or may not be used by the consumer. This liquid medium is now considered as packing material in OIML R 87, whereas before it was unclear whether the liquid medium should be considered part of the 'content', or not. This has led to the interpretation that the 'net content' of a prepackage includes the liquid medium and therefore both this 'net quantity' and the 'drained weight' have to be declared on the prepackage. With the new definitions in the revised OIML R 87 it is now easier to deal with the liquid medium packed with a food product in a prepackage:

- if the liquid medium is not intended to be part of the food product, but is clearly meant to be packing material (ie. to be left over after use of the product), the consumer would not be interested in the quantity of the liquid medium and this does not need to be declared separately on the prepackage;
- if the liquid medium is not intended to be part of the product, but may be used by the consumer, the quantity of the liquid medium may be declared separately on the prepackage;
- if the liquid medium is intended to be part of the food product, the quantity of product declared on the prepackage is inclusive of the liquid medium (the liquid medium is an ingredient of the food product).

4. The proposal

The proposal is to bring the Commission proposal COM(2008)40final in line with the 2004 revision of OIML R 87 by the amendments shown in the annex.

5. Explanations

Note: References are to the corresponding sections in the annex.

- (A.) As mentioned in 2. above, the preferred term to refer to the quantitative content of food in a prepackage would be: 'quantity of food'.
- (B.) Where appropriate, the word 'net' has been deleted.
Symbols for measurement quantities (l or L, cl, ml, kg and g) have been added in paragraph 1. For consistency, "expressed, using" in paragraph 1. has been replaced by: "declared in".
- (C.) Paragraph 1. (a), (i) in annex VII is confusing and can be deleted for the following reasons:
- The 'drained net weight', 'indicated' in accordance with point 5 of annex VIII, is not an ingredient or category of ingredients of the food product, but the total quantity of food product in the prepackage.
 - Point 5 of annex VIII is about solid food packed with a liquid medium that is generally intended as packing material and sometimes may be used by the consumer, for processing the food or for consumption, but which is not considered as an ingredient of the food product.
- (D.) Throughout the text of annex VIII, the word 'net' has been deleted, and the word 'indicated' replaced by: 'declared'.

The first sentence of point 5 has been amended to clarify that the drained quantity shall be declared as the quantity of food in a prepackage where the food is packed with a liquid medium which is not considered an ingredient of the food product.

A sentence has been inserted after the first sentence in point 5 providing the possibility to separately declare the quantity of the liquid medium which is packed with the food product in case this liquid medium, although not an ingredient of the food product, may be used by the consumer, either for consumption, or for processing the food product.

ANNEX

Proposed amendments to the proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers COM(2008)40final

- A. In article 9, 1. (e) replace ‘the net quantity of the food’ by: ‘the quantity of food’.
- B. Amend article 24 to read as follows:

Quantity of food

1. The quantity of food shall be declared in litres (l of L), centiliters (cl), milliliters (ml), kilograms (kg) or grams (g), as appropriate:
 - (a) in units of volume in the case of liquids;
 - (b) in units of mass in the case of other products.
 2. The declaration of the quantity for certain specified foods in a different manner than the one described in paragraph 1 may be established by the Commission. Those measures designed to amend the non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).
 3. Technical rules for applying paragraph 1, including specific cases where the declaration of the quantity of food shall not be required, are laid down in Annex VIII.
- C. In annex VII, delete 1, (a), (i).
- D. Amend Annex VIII to read as follows:

DECLARATION OF THE QUANTITY OF FOOD

1. The declaration of the quantity of food shall not be mandatory in the case of foods:
 - (a) which are subject to considerable losses in their volume or mass and which are sold by number or weighed in the presence of the purchaser; or
 - (b) the net quantity of which is less than 5 g or 5 ml; however, this provision shall not apply to spices and herbs.
2. Where the declaration of a certain type of quantity (such as the nominal quantity, minimum quantity, average quantity) is required by Community provisions or, where there are none, by national provisions, this quantity shall be regarded as the quantity of food for the purposes of this Regulation.
3. Where a prepacked item consists of two or more individual prepacked items containing the same quantity of the same product, the quantity of food shall be declared by mentioning the quantity contained in each individual package and the total number of such packages. The declaration of those particulars shall not, however, be mandatory where the total number of

individual packages can be clearly seen and easily counted from the outside and where at least one declaration of the quantity contained in each individual package can be clearly seen from the outside.

4. Where a prepacked item consists of two or more individual packages which are not regarded as units of sale, the quantity of food shall be given by declaring the total quantity and the total number of individual packages.
5. Where a solid food is packed with a liquid medium and this liquid medium is not an ingredient of the food product, the drained quantity shall be declared as the quantity of food.

If such liquid medium may be used by the consumer separate from, or with the food product with which it is packed (for processing or consumption), the quantity of the liquid medium may be declared in addition to the quantity of food.

For the purposes of this point, 'liquid medium' shall mean the following products, possibly in mixtures and also where frozen or quick-frozen, provided that the liquid is merely an adjunct to the essential elements of that preparation and is thus not a decisive factor for the purchase: water, aqueous solutions of salts, brine, aqueous solutions of food acids, vinegar, aqueous solutions of sugars, aqueous solutions of other sweetening substances, fruit or vegetable juices in the case of fruit or vegetables.