

Harmonisation of interpretations across the EU- A potential dispute resolution procedure

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Introduction

CECIP is the European association for the manufacturers and suppliers of weighing instruments across the EU. CECIP is composed of a wide range of European companies that manufacture instruments in accordance with the requirements of European legislation and then place them on the European Market. If an instrument is to be used for a regulated purpose¹ it must have a type examination certificate² issued by notified body³ and be conformity assessed⁴. The responsibility for ensuring compliance rests with the manufacturer of the instrument and this is demonstrated via the manufacturers Declaration of Conformity⁵

Member states have a requirement to take appropriate measures to prevent the making available on the market of non-compliant products. They are required to ensure effective surveillance of their market by carrying out the monitoring of products and to ensure the removal of non-compliant and dangerous products from the market.

The Problem

In order to be effective, the market surveillance effort should be consistent and uniform across the Union and the legislative interpretations of market surveillance authorities should mirror those of the notified bodies. Where a market surveillance authority and a notified body have different interpretations, the manufacturer is left in an untenable situation of having a legitimate type examination certificate which is not accepted by a local market surveillance authority. This risks the manufacturer adapting the design of the instrument to meet what amounts to local market surveillance requirements. This appears inconsistent with the principles of the European Single Market.

There are a number of administrative vehicles to resolve this situation; the matter can be discussed at the various WELMEC Working groups to see if a resolution can be achieved or the matter can be resolved via the courts system. Whilst recognising the advantages of using existing administrative procedures these have their own weaknesses. The WELMEC procedures have the merit of being composed of a wide range of European legal metrology experts but are cumbersome and slow and can

¹ A regulated purpose is one of the applications listed in Article 1(2) of the Directive 2014/31

² A type examination certificate is the part of the conformity assessment procedure in which a notified body examines the technical design of the specimen type of the instrument and verifies and attests that the technical design of the instrument meets the requirements of the Directive that apply to it.

³ The primary task of the notified body is to provide conformity assessment services on the conditions set out in the applicable Union harmonisation legislation.

⁴ Initial verification takes place the first time a non-automatic weighing instrument is placed on the market or put into service

⁵ The Declaration of Conformity is the document that states that the product satisfies all the relevant requirements of the applicable legislation. By drawing up and signing the Declaration of Conformity the manufacturer assumes responsibility for compliance of the product.

take many years to reach a conclusion. The choice of using the courts to resolve a disagreement between a market surveillance authority and a notified body will only be effective within the jurisdiction of the court and may still leave the notified body unwilling to change the type examination certificate they believed to be correct.

CECIP favours the use of WELMEC or any platform to discuss these issues above the use of courts. However, as mentioned, the current WELMEC procedures have it flaws as well. For one, the procedures to find consensus on a certain topic are generally timely. Moreover, the WELMEC working groups often consist of a certain 'type' of experts such as market surveillance authorities or ministries. This leaves room for improvement in the procedure to find common interpretation. Therefore, CECIP would like to propose the outline of a potential "dispute resolution" method that would have the benefit of reaching an expeditious outcome that would be beneficial to all stakeholders.

Whilst recognising that establishing such a procedure is complex and requires input from all relevant stakeholders, CECIP wants to make a suggestion for such a procedure as a starting point for the discussion.

A solution, how could this work?

When issues that appear consistently difficult to resolve via existing WELMEC channels become apparent these could be passed to a standing committee of stakeholders that would be mandated to come to a solution that would be agreed by all stakeholders.

There are a number of matters that would need to be resolved before this suggestion could become operational.

1) What would trigger a referral to such a committee?

This could be done by at least two stakeholders that sit on one of the WELMEC Working Groups and would include organisations that are invited members to the WELMEC Groups as well as Member states. By requiring at least two stakeholders to request a referral this would necessitate a level of agreement that the matter could not be resolved within the various working groups. It is envisaged that minimum requirements for at least two members would include those parties that disagreed on the technical interpretation. This process could be affected in standing operating procedures agreed by the WELMEC Committee.

2) Who would sit on such a committee?

This could be decided depending upon the matter being discussed. It is suggested that there should be a minimum of five members in order to give the decisions of the committee sufficient credibility. It should include as minimum representatives of three Member states and the two parties that made the referral to the committee. For the acceptance of the agreement industry representation is beneficial. Furthermore, the committee should be a good balance of relevant authorities (i.e. include a representative of a notified body, ministry and market surveillance authority)

3) How would the decisions of the Standing Committee be implemented?

This is clearly the most problematic of the potential matters that need to be resolved as WELEMC can only issue advice and the ultimate decision as to whether this could be implemented nationally will always rest with the Member state. It is proposed that there should be an agreement by the WELMEC members to implement the decisions where practicable and the decisions of the standing committee be published. The publication of the decisions will be useful in clarifying on-going discussions.

An Example- 'Weighing below minimum'

For many years there has been differing views on the meaning of Article 15, Annex 1 of the Directive 2014/31. "Printing below minimum". Some member states interpreted this clause as meaning that all non-automatic weighing instruments were prohibited from printing below the minimum load and others took the view that it was only price indicating instruments that are used for the packing of pre-packages that were prohibited from printing below minimum. This was first discussed at WG2 in 2014 and there has only recently been an agreement between member states to treat this matter consistently. One of the structural problems is that these discussions went from one WELMEC working group to another or to other bodies such as NoBoMet. In the intervening 6 years manufacturers were required to supply instruments with different software to certain members states in contrast to others.

Under the proposed scheme of a standing committee; when two parties agreed that it was not possible to reach an agreement a standing committee could be formed. In this instance it would have been CECIP and one-member state that could not agree. The standing committee would therefore be composed of CECIP and representatives of four member states. This committee would then be tasked with coming to an agreement in a defined period of time and the decision would then be published. It is hoped that this would then lead to an improved consistency across the single market

If there could still be no agreement after this process the court processes must be the final method of resolution

Starting point for discussion

A uniform interpretation of technical requirements for weighing instruments is important for users, consumers and industry. CECIP is convinced the current procedures to reach consensus on interpretations are not sufficient in practice for all cases. With the above suggestion CECIP aims at starting a discussion within platforms such as WELMEC, NoBoMet and the European Commission's working group Measuring Instruments. The final goal would be a procedure that is inclusive, transparent, fast and leads to widely-accepted decisions. We call on the Member States and the European Commission to join this discussion and work together on the development of such a procedure.