This translation was prepared by VDMA Measuring and Testing Technology and is intended solely as a non-binding convenience translation for interested experts involved in weighing technology products, their conformity assessment, market surveillance or verification in use, to assess the case law of the Higher Administrative Court of North Rhine-Westphalia. It was prepared on the basis of the ruling of the 4th Senate of the Higher Administrative Court of North Rhine-Westphalia dated 8 September 2022, published on the Internet in the case law database Justiz NRW ONLINE. This is not an official translation and does not claim to be complete or to provide an exact interpretation of the existing legal provisions. It is not a substitute for studying the relevant directives, laws and regulations. The German version of the published judgment is authoritative.

Higher Administrative Court NRW, 4 A 1278/21

Date: 08.09.2022

Court: Higher Administrative Court NRW

Ruling body: 4th Senate

Type of decision: Judgment

Reference number: 4 A 1278/21

ECLI: ECLI:DE:OVGNRW:2022:0908.4A1278.21.00

Previous instance: Cologne Administrative Court, 1 K 2672/20

Keywords: digital display display device inscriptions design operating condition permanent durability DIN EN 45501 display calibration value position of use suitable device device-specific requirements weight display trade barriers harmonized standard harmonization maximum load identification mark international technical regulations international standard marking label conformity assessment conformity assessment procedure declaration of conformity legibility market surveillance market surveillance authority measuring instruments metrological characteristics metrology minimum load misuse misuse protection non-automatic weighing instrument standard history OIML OIML-Recommendation Traceability Visibility Software Language versions TBT Agreement Technology openness Transferability Indelible Weighing range Free movement of goods WELMEC Essential requirements WTO Customs authority

References: MessEG § 50 para. 2, MessEG § 50 para. 1, MessEG § 3 no. 13, MessEG § 6 para. 1,; MessEG § 6 para. 5, MessEV § 8 para. 1 no. 11, MessEV § 13 para. 1, MessEV § 15 para. 3,; Directive 2014/31/EU Art. 6 para. 5 UA 2, Directive 2014/31/EU Annex III, Directive 2014/31/EU Annex I, Regulation (EU) 1025/2012

Guiding principles:

1. According to the interpretation of Directive 2014/31/EU, which applies to non-automatic weighing instruments, the exclusively digital indication of the maximum capacity (Max), minimum capacity (Min) and verification scale interval (e) in the display for the weight indication can also meet the requirements of good visibility, legibility and indelibility according to Annex III No. 1.1 and 1.2 of Directive 2014/31/EU, which is why a display can be a suitable device for affixing the metrological parameters.

2. Directive 2014/31/EU neither expressly permits nor prohibits the presentation of the required information on maximum capacity, minimum capacity and verification scale interval in an electronic display.

3. The essential device-specific requirements for a digital display result from Annex I of Directive 2014/31/EU because it is a design-related technical solution.

4. In order for a digital display to be permanent or indelible and thus suitable for an inscription or marking, the manufacturer must ensure during the design and manufacture of the device that the software responsible for displaying the metrological values is protected against unintentional misuse in accordance with the requirements of Annex I to Directive 2014/31/EU and that any alteration of the displayed metrological values is prevented.

5. The exclusively digital display of the metrological values for min, max and e was recognized as a technically acceptable solution by the International Organization of Legal Metrology (OIML) long before the adoption of Directive 2014/31/EU. With OIML Recommendation R 76-1, 2006 edition, an international standard on the metrological and technical requirements for non-automatic weighing instruments was developed, which the legislator of the Directive had to take as a basis in its essential parts in view of its obligations under international law to remove barriers to trade when legislating.

6. A broad understanding of the term, taking into account international standards, corresponds to the legislator's intention to limit himself to the essential metrological and technical requirements relating to non-automatic weighing instruments used for specific purposes.

7. An exclusively digital display of the metrological values at issue does not raise any concerns with regard to effective control by the market surveillance authority. Neither the Directive nor Regulation (EU) 2019/1020 on market surveillance and compliance of products, which also applies to products within the meaning of Directive 2014/31/EU, contains any indication that these inscriptions should therefore be designed in a specific way to facilitate the exercise of market surveillance.

8. If the metrological values for max, min and e are shown on the display of the weighing instrument during operation, the proof of the conformity assessment procedure also extends to whether the device-specific essential requirements according to Annex I of Directive 2014/31/EU, to which the presumption of conformity according to Art. 12 of Directive 2014/31/EU (§ 7 para. 1 MessEG) also refers in the case of conformity with the specifications of DIN EN 45501:2015, are fulfilled.
9. The EU type-examination certificate must show conformity with the requirements applicable to the digital display of metrological values in accordance with Annex I of the Directive.

Tenor:

On the plaintiff's appeal, the judgment of the Administrative Court of Cologne of April 21, 2021 is amended.

The order of the defendant of 29.4.2020 is revoked.

The defendant shall bear the costs of the proceedings of both instances.

The judgment is provisionally enforceable due to the costs. The defendant may avert enforcement by providing security in the amount of 110% of the amount enforceable on the basis of the judgment, unless the plaintiff provides security in the amount of 110% of the amount to be enforced in each case prior to enforcement.

The appeal is allowed.

Facts of the case:

The plaintiff is a manufacturer of weighing instruments which require the intervention of an operator when weighing (so-called non-automatic weighing instruments) and are intended for use in the course of trade. The maximum capacity (Max), minimum capacity (Min) and verification scale interval (e) of the models at issue here are displayed exclusively in digital form on the weighing instrument’s display, where they can always be seen together with the measured weighing result during operation. According to the information provided by NMi Certin B. V. issued on 7.7.2020 for the device model, access to the software responsible for the display is protected by a verification seal. There is an adjustment lock inside the housing of the weighing platform. The software approved for displaying the primary indications on the devices is specified in No. 2.1.1 of the EU type-examination certificate. Every change and every download of relevant software is logged in the event logger.

Following an official inspection, the Landesbetrieb Mess- und Eichwesen Nordrhein-Westfalen (hereinafter: Landesbetrieb) informed the plaintiff in February 2020 that the specification of the configuration parameters (max, min, e) in exclusively digital form did not comply with the requirements of Directive 2014/31/EU because it did not meet the

mandatory durability requirement. This is because when the weighing instruments are switched off, these metrological values also disappear from the display.

The plaintiff disagreed with the view of the state authority. According to the meaning and purpose of the requirements in Annex III No. 1.1 of Directive 2014/31/EU, the aim is to ensure that the information is tamper-proof. These should be available throughout the entire service life of the weighing instruments and provide the user with reliable information about the operative range (i.e. minimum and maximum capacity) and the accuracy of the display (verification scale interval e) for which the weighing instruments are intended and approved for use in legal metrology. This is guaranteed when these metrological values are shown on the display.

By administrative order dated 29.4.2020, the state authority prohibited the plaintiff from placing non-automatic weighing instruments on the market in North Rhine-Westphalia from 1.6.2020, which only display the inscriptions of Max, Min and e digitally in the display of the weighing instrument and (in which) these inscriptions are not permanently affixed at any other place (e.g. identification plate) (No. 1). For each case of non-compliance, he threatened to impose a penalty payment of EUR 1,000.00 (No. 2). He essentially stated the reasons for this: The prohibition order was based on Section 50 (2) No. 5 MessEG. There was more than a reasonable suspicion that the weighing instruments placed on the market by the applicant did not meet the requirements of § 6 MessEG. According to paragraph 5, a measuring instrument must bear the inscriptions specified in an ordinance pursuant to § 30 No. 4 MessEG for the purpose of further identification of the instrument and the manufacturer or importer. The inscriptions with which a non-automatic weighing instrument is to be additionally provided are regulated by § 15 (3) MessEV. The indication of Max, Min and e in exclusively digital form does not meet these requirements and is also not compatible with Annex III No. 1.1 of Directive 2014/31/EU. According to Art. 6 (5) subparagraph 2 in conjunction with Annex III No. 1.2 of Directive 2014/31/EU, the inscriptions must be affixed to the weighing instruments using adequate facilities. The wording makes it clear that it must be a printed text. One option mentioned in Annex III No. 1.3 of Directive 2014/31/EU is the label. A purely digital indication of the maximum and minimum capacity as well as the verification scale interval also does not meet the requirement that a weighing instrument must be “identifiable at any time” by the EU market surveillance authorities and protect users as purchasers of the products. Nothing else follows from the harmonized standard DIN EN 45501, according to which the permanent and simultaneous display of the values of Max, Min and e on the display device for the weighing result when the weighing instrument is switched on is considered an acceptable solution. The statements made there on the technical implementation of the inscriptions are of no legal significance because the presumption of conformity applicable in this respect pursuant to Art. 12 of Directive 2014/31/EU only concerns the essential safety requirements pursuant to Annex I of the Directive, but not the inscriptions obligations pursuant to Annex III. It is

highly probable that the applicant has committed further infringements of the law because it has not shown any understanding in the hearing procedure. The protection of the European and national legal system, ensuring the protection of potential buyers against the purchase of measuring devices that do not comply with the Directive and the protection of proper market surveillance and fair competition were the decisive factors for issuing the administrative order as part of the selection process. As a manufacturer within the meaning of § 2 No. 6 MessEG, which according to § 23 para. 2 MessEG must ensure that the measuring instruments he places on the market are provided with the required labels, the applicant is also the correct addressee of the administrative order. Finally, the administrative order, which is directed exclusively towards the future, is proportionate; in particular, the formal conformity of the measuring devices can be established at an extremely low cost.

The plaintiff brought an action against this administrative order. The form of presentation of the metrological values in dispute chosen here is in accordance with the relevant provisions. Neither the wording of the Directive nor that of national law preclude the presentation of the Max, Min and e data by electronic display. The meaning and purpose of the Directive also do not preclude an exclusively digital display of the mandatory information. The user of the weighing instruments should be able to easily recognize, together with the weighing result, whether the latter is within the intended "approved range" of the weighing instruments, i.e. is neither too light nor too heavy for their use (and reliable function) and with what accuracy (with regard to the verification scale interval e) the result is displayed. It is precisely for this reason that the Directive stipulates that this information must be within the field of vision of the result display of each weighing instruments, which is achieved in an almost ideal way by the solution chosen here of a presentation directly in the display (together with the weighing result). The permanence of the information is guaranteed with the digital display because it cannot be changed at will afterwards. There is no need to worry about incorrect data being displayed in a digital solution due to possible incorrect programming of the electronic display. Manipulation of the fixed values for Max, Min and e, which are not to be measured, also makes no sense from the outset. Finally, the fact that the information on Max, Min and e is no longer visible when the scales are switched off, in the event of a power failure, electronic defect or similar does not contradict the characteristic of indelibility, because in these cases there is no need for this information to be visible. In this respect, the Landesbetrieb not only ignores the meaning and purpose of the Directive, but also its wording, according to which the markings must be "visible when the instrument is in its regular operating position" (Annex III No. 1.2 of Directive 2014/31/EU). A different interpretation does not follow from the fact that the market surveillance authorities must be able to check the weighing instruments at any time. Based on this alone, no more stringent requirements can be imposed than are necessary for the actual purpose of the Directive. Moreover, it is not unusual for weighing intruments to be switched on briefly in order to check that they are in good

condition and functioning properly. The same applies, for example, to checking compliance with the requirements for accuracy and maximal permissible errors. The fact that the digital indication in the display is expressly listed as an "acceptable solution" under No. 7.1.2 of the harmonized standard DIN EN 45501 also supports its interpretation. Although the harmonized standard has no binding effect in this respect, it serves the uniform interpretation of the Directive and should therefore not be disregarded. The Landesbetrieb also disregarded the fact that it - the plaintiff - has been selling weighing instruments with an exclusively digital display of Max, Min and e for many years without objection, not only throughout Germany but also in various Member States of the European Union. For the model of weighing instruments at issue, NMi Certin B. V., as a formally accredited notified body, issued an EU type examination certificate in July 2020 for the model of weighing instruments at issue and also issued a statement on the digital display of Max, Min and e. According to the certificate, the requirement for indelibility is met by the fact that it is not possible to interfere with the display or the relevant software because access to the software is secured by security seals (No. 1.3 of the certificate). The type examination certificate confirms the conformity of a prototype with all relevant requirements for this product. It forms the basis for the declaration of conformity to be submitted by the manufacturer before placing the product on the market. Therefore, there is a presumption of conformity with the relevant requirements of Directive 2014/31/EU. Other notified bodies formally accredited under Regulation (EC) 765/2008, such as the Physikalisch-Technische Bundesanstalt (PTB) or METAS from Switzerland, had not expressed any concerns regarding the digital display of the information. In principle, a manufacturer must be able to rely on their assessment, especially as EU law requires the involvement of accredited conformity assessment bodies in order not to leave the examination of conformity with the Directive to the manufacturers alone from the outset. Finally, the Landesbetrieb failed to take into account the fact that a "standard label that is always the same" was not in dispute here. Rather, the information on the weighing range would only be set depending on specific customer requirements when these weighing instruments were actually placed on the market or in the final configuration on the respective weighing instruments immediately preceding this placing on the market. Any other installation on site would in any case be associated with considerable practical difficulties.

The plaintiff has applied for

annul the defendant's administrative order of 29.4.2020.

The defendant has requested

dismiss the action.

In support of this, it repeated its statements from the administrative proceedings and provided additional information: The relevant regulations require that the indications of Max, Min and e must be clearly visible, legible and indelibly affixed to the measuring

device. The term "affixed" - which means something different from "displayed" - clearly expresses that a mere electronic display is not sufficient. Something is only attached if it is physically and analogously connected to the measuring instrument and not if it can only be called up when it is switched on. Nothing else follows from Annex III No. 1.2 of Directive 2014/31/EU. The term "regular operating position" does not refer to the electronic weighing instruments being switched on, but to their correct positioning. The label with the mandatory information must therefore be affixed in such a way that it is visible when the appliance is in its normal position of use, i.e. it can be read without any particular effort. If the Directive had pursued the objective of also allowing the required data to be indicated on the display in electronic form only, the legislator should have expressed this and also created a counterpart to the non-removability without damage regulated in Annex III No. 1.2 sentence 1 of Directive 2014/31/EU. The legislator did not specify a corresponding digital version of the protection, which means that it only wanted to allow analog marking of the weighing instruments at this point. Furthermore, the requirements for the inscriptions in Annex III of Directive 2014/31/EU were not only intended to enable the user to recognize the weighing range, but also to enable the market surveillance authorities to check whether the manufacturer had manufactured and marketed its weighing instruments in accordance with the device-specific requirements. If the weighing instruments were de-energized or had a defect, it would not be possible to check compliance with the Directive. Situations should also be considered in which the market surveillance authorities are not able to connect the weighing instruments to be checked to the power supply, or only under difficult conditions, for example when checking imported weighing instruments in ports and at customs stations. There are also considerable reasons for not allowing the mere electronic indication on the display to be sufficient. Programming could take place unnoticed in the background that would falsify precisely this information. An electronic malfunction of the display could be used to defraud consumers on a massive scale. The design result is confirmed in DIN EN 45501, whose presumption of conformity in accordance with Article 12 of Directive 2014/31/EU only applies to the essential requirements of Annex I of the Directive, but not to the manufacturer's labeling obligations. In DIN EN 45501, it is precisely stated under No. 7 that the information on Max, Min and e must be displayed in analog form and may only be displayed digitally at the same time. Insofar as the applicant refers to the EU type examination certificate, this has no presumptive effect with regard to compliance with product requirements and does not bind him as a market surveillance authority. The difficulties described by the plaintiff in attaching the inscriptions in analog form are in part incomprehensible, but in any case legally irrelevant.

The Administrative Court dismissed the action. The plaintiff's weighing instruments did not meet the requirements of Section 2 of the (German) Measurement and Verification Act, according to which measuring instruments must be clearly visible, legible and permanently marked with the inscriptions specified in Section 15 (3) No. 2 to 4 MessEV.

These requirements are not met if, as in this case, the mandatory information is only shown on the digital display of the weighing instruments and not at least in the form of a physical-analog inscription. The interpretation of the national provisions in terms of wording and system already shows that the legislator assumed a physical-analog inscription. It can no longer be said that the display is an "inscription". The term "affixed" in Section 13 (1) sentence 1 MessEV also suggests a physical connection between the label and the measuring device. Furthermore, in view of the requirements formulated in § 13 para. 1 sentence 1 MessEV for the inscriptions, in particular the durability and legibility, it must be assumed that uninterrupted legibility of the inscription is required. A digital display cannot guarantee this because it goes out when it is switched off. Even according to conventional usage, it cannot be assumed that an inscription is permanent if its display depends on the functioning of a digital display. An interpretation of Directive 2014/31/EU with regard to the wording and system - also taking into account other language versions - confirmed the interpretation of national Metrology and Verification Ordinance. In particular, nothing else follows from Annex III No. 1.2 sentence 2 of Directive 2014/31/EU, according to which the inscriptions must be visible in the "in regular operating position of the device". This is not to be understood as normal use in the sense of a switched-on device. Rather, "operating position" refers to the installation of the scales in the room, i.e. the positioning of the measuring device. The inscriptions should be visible regardless of the operating status in the normal set-up of the device. This result is systematically confirmed by the fact that Annex III No. 1.2 of Directive 2014/31/EU stipulates that suitable devices for affixing the conformity marking and the inscriptions must be provided on the designated measuring instruments. These must be designed in such a way that the conformity marking and inscriptions cannot be removed without being damaged. "Removal without damage" of inscriptions would in turn suggest that the inscriptiopns are actually physical, as damage cannot occur if they are shown on a display due to the lack of physical reproduction. Furthermore, according to Annex III No. 1.3 of Directive 2014/31/EU, special protection against counterfeiting must be ensured when using identification plates. If the European legislator had wanted to allow a digital display as an alternative, it would have been obvious, for example, to provide for securing access to the software and possibly also certification of the software itself. Nothing else follows from Annex III No. 1.4 of Directive 2014/31/EU, according to which the indications Max, Min, e and d must also be placed near the weight display if they are not already there. The Directive covers the case where a physical-analog inscription is present but is not located near the weight display. In this case, this information must be repeated near the weight display, which is made clear by the word "also". The meaning and purpose of the prescribed inscriptions did not require a different assessment. The purpose of the provisions on metrology and verification was to provide those involved in commercial transactions with the certainty that commercial goods could be reliably determined according to their size, volume, dimension and/or mass. On the one hand, the prescribed inscriptions serve to provide the user with

information, in particular on the weighing range (minimum and maximum capacity) and the verification scale interval of the weighing instrument , and on the other hand to enable the market surveillance authorities to satisfy themselves that a measuring instrument has been properly placed on the market with the aid of these inscriptions. It is not excluded from the outset that these purposes can also be sufficiently fulfilled by a digital display with an appropriate design. However, whether the European legislator could have permitted a digital display is ultimately a question of legal policy. Based on the clear wording and the regulatory system, it can be assumed that it only wanted to allow a physical-analog inscription. In any case, it is not apparent that a mere digital display of the mandatory information would be better suited to achieving the protective purposes of the inscriptions than a physical-analog inscription, so that there is no reason to allow a digital display contrary to the wording for teleological reasons. The plaintiff's breach of the labelling obligations is not legalized by the EU type examination certificate issued to it. This certificate neither has a binding effect on the market surveillance authorities with regard to the conformity of the certified appliance model, nor does it give rise to a legitimate expectation on the part of the plaintiff that market surveillance measures will not be taken. Since the presumption effect of § 7 para. 1 MessEG does not extend to markings and inscriptions, it would also not lead to a legalization or a trust of the plaintiff worthy of protection if the mere digital display were to be permitted in a harmonized standard.

In support of its appeal, which was allowed by the Administrative Court, the plaintiff submits, repeating and expanding on its arguments at first instance, that there is nothing to suggest that the digital display of the mandatory information was deliberately excluded according to the will of the EU legislator. In particular, her understanding of the standard does not go beyond the limits of the wording. Rather, the requirements in Directive 2014/31/EU are fundamentally open to technology. A restriction solely to "physical-analog inscriptions" was not expressed in the text of the Directive, unless the term "inscription" alone is absolutized in such a way that "digital displays" are excluded. It is true that the terms "inscription" and "display" cannot simply be equated. However, it cannot be concluded from this that a digital display cannot be subsumed under the general requirement to display certain content as an "inscription". In particular, the characteristic of permanence is also fulfilled. The characteristic of the "indelible" display does not already mean the temporary "extinguishing of the display" when the weighing instruments are switched off, but only the irretrievable "extinguishing" that would be associated with the removal of the "inscription". It must be ensured that the information is retained for the entire service life of the measuring device. Regulations on tamper protection for the digital display can already be found in Annex I No. 8.3 and 8.5 of Directive 2014/31/EU. In the event of a permanent failure of the display, the measuring device as a whole would be inoperable, so that there would then no longer be any need to display the mandatory information at issue. Their understanding of the standard is confirmed both in DIN EN 45501 and in No. 3.1.15 of WELMEC Guideline 2

(2015), which is still valid today. Both should at least be taken into account as other sources of knowledge when interpreting the primary rules in the text of the Directive. This applies above all with regard to the technical specifications in DIN EN 45501, because compliance with the rules there in accordance with Section 7 (1) No. 1 MessEG generally triggers a presumption of conformity with the Directive. The inscriptions in dispute here are among the essential requirements within the meaning of the standard because they are standardized at national level in § 15 para. 3 no. 2 to 4 and § 13 para. 1 sentence 1 MessEV. Unlike Art. 12 of Directive 2014/31/EU, Section 7 (1) no. 1 MessEG does not limit the presumption of conformity to requirements from Annex I of the Directive, at least according to the wording. In this context, the EU type examination certificate is also not meaningless. It must be conceded that such a certificate is not an administrative act issued by a sovereign authority and therefore cannot formally claim the same binding force. However, this does not mean that it is completely non-binding. It would seem almost paradoxical if, on the one hand, the manufacturer had to make use of the contribution of the accredited notified bodies but, on the other hand, could not rely on the assessment issued by them. In any case, the assessment documented by the EU type-examination certificate pursuant to Art. 11 (5) of Regulation (EU) 2019/1020 must be duly taken into account. This applies all the more if the assessment contained therein corresponds to the assessments of other notified bodies and is confirmed by corresponding provisions in harmonized standards or other technical specifications.

The applicant requested

to amend the judgment of the Cologne Administrative Court of 21.4.2021 and to annul the defendant's prohibition order of 29.4.2020.

The defendant applies,

dismiss the appeal.

In its reasoning, it essentially states that the clear wording of Directive 2014/31/EU - both in the German and other language versions - is contrary to the legal opinion represented by the plaintiff. All language versions of the Directive require an inscription on the device itself, which must above all be permanently visible, i.e. not only when switched on. Otherwise, it would be practically impossible, or at least considerably more difficult, to carry out checks when importing weighing instruments because the weighing instruments could not be connected to the electrical circuit. It must be possible for customs to see at a glance which weighing instruments are involved and whether they match the shipping documents. In addition, an electronic influence on the displayed weighing result could be programmed in, which would take place outside the security mechanisms of the weighing instruments manufacturer described by the plaintiff. The sub-legal regulations referred to by the plaintiff could not lead to a different result due to the primacy of Directive 2014/31/EU, especially since the WELMEC guideline referred to by the plaintiff for interpretation, as a mere expression of opinion of

an association registered and incorporated in Germany, has no normative force from the outset. It is disputed that there is a contrary long-standing practice of the market surveillance authorities in other EU member states. The type examination certificate issued to the applicant was duly taken into account by the state authority. This meant, above all, carrying out a comparison with the underlying EU regulations in order to determine whether the type examination certificate appeared plausible and in accordance with the law.

Reference is made to the content of the court files (two electronic court files) and the defendant's administrative file (one volume) for further details of the facts and the dispute.

Reasons for the decision:

The defendant's request of 26.9.2022 to reopen the oral hearing is not to be granted. The reopening of the oral hearing pursuant to Section 104 (3) sentence 2 VwGO is excluded if - as here on 9.9.2022 - a final judgment has already been pronounced (Section 116 (1) sentence 1 VwGO).

See BVerwG, judgment of 14.11.2016 - 5 C 10.15 D -, BVerwGE 156, 229 = juris, para. 7, with further references. N., and decision of 25.1.2016 - 2 B 34.14 -, juris, para. 29.

The plaintiff's appeal is successful.

The admissible action is well-founded.

The contested administrative order of the defendant is unlawful and infringes the plaintiff's rights, Section 113 (1) sentence 1 VwGO.

Section 50 (2) sentence 1 and sentence 2 no. 5, (1) MessEG alone can be considered as the authorization basis for the prohibition order in no. 1 of the notice. According to this, the market surveillance authorities take the necessary measures if they have reasonable grounds to suspect that measuring instruments do not meet the requirements of Section 2 MessEG. In particular, they are authorized to prohibit a product from being made available on the market. These requirements are not met here (see I. below). Consequently, the threat of a penalty payment in No. 2 of the contested decision also proves to be unlawful (see II. below).

I. The power of the market surveillance authority pursuant to § 50 para. 2 sentence 1 MessEG to issue regulatory measures extends to measuring instruments insofar as they are covered by the (German) Metrology and Verification Ordinance issued pursuant to §§ 1 no. 1, 4 para. 1 and 2 MessEG. Measuring instruments are all devices or systems of devices with a measuring function, including measuring standards, which are intended for use in commercial or official transactions or for carrying out measurements in the public interest (Section 3 No. 13 MessEG). These include non-automatic weighing instruments within the meaning of Section 8 (1) No. 11, (2) MessEV in conjunction with

Annex 3 Table 1 Column 2 and Art. 2 No. 2 of Directive 2014/31/EU. These may only be placed on the market in accordance with Section 6 (1) and (5) MessEG if they are provided with the markings specified in an ordinance in accordance with Section 30 No. 4 MessEG for further identification of the device and the manufacturer or importer. Among other things, non-automatic weighing instruments pursuant to §§ 13 para. 1 sentence 1, 15 para. 3 sentence 1 no. 2 to 4 of the (German) Metrology and Verification Ordinance issued on the basis of § 30 no. 4 MessEG must be provided with clearly visible, legible and indelible markings on the measuring instrument indicating the maximum capacity, minimum capacity and verification scale interval (see 1.). The devices in dispute here meet these requirements (see 2.).

1. according to § 15 para. 3 sentence 1 no. 2 to 4 MessEV, non-automatic weighing instruments must be provided with labels indicating the maximum capacity ("Max"), minimum capacity ("Min") and the value in units of mass for the classification and verification of a weighing instrument (verification scale interval - "e"). These inscriptions must be clearly visible, legible and indelibly affixed to the measuring instrument in accordance with Section 15 (3) sentence 2 MessEV in the vicinity of the weight display and Section 13 (1) sentence 1 MessEV; they must be clear, indelible and non-transferable.

These requirements can also be met by the exclusively digital display of the maximum capacity, minimum capacity and verification scale interval. According to the declared intention of the regulation, the provision of § 13 Para. 1 MessEV does not restrict the type of technical realization of labels to certain technologies. However, it is essential that the requirements specified in paragraph 1 are observed in each case.

See BR-Drs. 493/14, p. 143.

This is also confirmed by an interpretation of Sections 13 and 15 MessEV in the light of the EU provisions of Directive 2014/31/EU on the obligation to affix markings and inscriptions on non-automatic weighing instruments that have been transposed into national law [see a)].

Cf. no. 12 of the introduction to the MessEV, BR-Drs. 493/14, p. 146.

The national legislator has transposed the provisions of Directive 2014/31/EU relating to marking and labelling obligations without standardizing any further requirements [see b)].

a) In accordance with the second subparagraph of Article 6(5) of Directive 2014/31/EU, manufacturers of weighing instruments intended to be used for the purposes referred to in Article 1(2)(a) to (f) of the Directive shall affix the inscriptions prescribed in point 1 of Annex III to Directive 2014/31/EU. According to Annex III No. 1.1 iv) to vi) of Directive 2014/31/EU, the devices must bear the maximum capacity, minimum capacity and verification scale interval inscriptions in a clearly visible, legible and indelible manner.

According to Annex III No. 1.4 of Directive 2014/31/EU, they must also be affixed in the vicinity of the weight display, unless they are already located there. Furthermore, Annex III No. 1.2 of Directive 2014/31/EU is limited to the requirement to provide "adequate facilities" for affixing the conformity marking and the inscriptions on the appliances, which must be such that the conformity marking and the inscriptions cannot be removed without being damaged and that the conformity marking and the inscriptions are visible when the appliance is in regular operating position. The Directive also does not explicitly restrict the type of technical realization of markings and inscriptions to certain technologies. The "appropriate devices" to be provided are not further limited. Their suitability depends on whether the other requirements for inscriptions are met. Annex III No. 1.3 of Directive 2014/31/EU contains more detailed requirements if an identification plate is used as an "adequate facilities". According to the interpretation of the Directive required here in accordance with the true intention of its author and the purpose pursued by the latter in the light of its wording in all languages,

see ECJ, judgment of 3.4.2014 - C-515/12 -, Celex No. 62012CJ0515 = juris, para. 19, with further references. N.,

the exclusively digital display of the maximum capacity, minimum capacity and verification scale interval in the display for the weight display can also meet the requirements of good visibility, legibility and indelibility in accordance with Annex III No. 1.1 and 1.2 of Directive 2014/31/EU, which is why a display can constitute a suitable device in the sense mentioned. The wording of the Directive does not indicate a contrary intention on the part of the legislator [see aa) below]. The history of the standard also does not support a restriction to exclusively physical-analog inscriptions [see bb)]. Finally, such a restriction is not necessary to achieve the objectives of EU law pursued by the provision and is also not provided for in the regulatory system [see cc)].

aa) Directive 2014/31/EU neither expressly permits nor prohibits the presentation of the required information on the maximum capacity, minimum capacity and verification scale interval in an electronic display. In this respect, the parties were still expressly in agreement in correspondence prior to the oral hearing and also at the oral hearing. Moreover, it cannot be reliably and unequivocally inferred from the wording of the requirements to be placed on "inscriptions" that an exclusively digital display of the metrological values at issue here should not satisfy the requirements of the Directive. In particular, such a conclusion cannot be drawn from the fact that, according to the second subparagraph of Article 6(5) of Directive 2014/31/EU, the "inscriptions" on weighing instruments must be affixed by the manufacturer and the instruments must bear the inscriptions in a clearly visible, legible and indelible manner in accordance with Annex III No. 1.1 of Directive 2014/31/EU. According to the German understanding of the term, the term "Aufschrift (engl:Inscription)" does not typically refer solely to a short text written on something for designation, as an indication or similar,

as abbreviated by Duden, online dictionary, meaning, "Aufschrift", available at https://www.duden.de/rechtschreibung/Aufschrift#bedeutung; Wahrig, Wörterbuch der deutschen Sprache, 5th edition 2012, explains "Aufschrift" as "something written on it, inscription",

but also to that which is written over something.

cf. J. Grimm/W. Grimm, Deutsches Wörterbuch, Neubearbeitung (A-F), vol. 3, p. 720, digitized version in the dictionary network of the Trier Center for Digital Humanities, version 01/21, "Aufschrift", available at: https://www.woerterbuchnetz.de/DWB2?lemid=A13761.

This corresponds to the fact that in German the terms "Angabe", "Beschriftung" or "Bezeichnung" are used synonymously with "Aufschrift".

Cf. J. Grimm/W. Grimm, Deutsches Wörterbuch, Neubearbeitung (A-F), vol. 3, p. 720, digitized version in the dictionary network of the Trier Center for Digital Humanities, version 01/21, "Aufschrift", available at: https://www.woerterbuchnetz.de/DWB2?lemid=A13761; Duden, online dictionary, synonyms, "Aufschrift", available at https://www.duden.de/synonyme/Aufschrift.

In addition, and above all, the English and French language versions of the Directive do not clearly limit this term to a text written "on something", at least with regard to the metrological values at issue here. The English version uses the term "inscriptions", the French version the term "inscriptions". These terms can be translated not only with the German term "Aufschrift" in the narrower sense mentioned above, but also with "Beschriftung" or "Inschrift" in the same way.

Cf. online dictionaries Langenscheidt English-German, "inscription", available at https://de.langenscheidt.com/englisch-deutsch/inscription, and French-German, "inscription", https://de.langenscheidt.com/franzoesisch-deutsch/inscription.

These broader terms, which better reflect the intended openness to technology, place more emphasis on "being inscribed" and less on a writing being "applied to" a device. Furthermore, unlike in the German version, these more open-ended terms in Article 6(5)(2) and Annex III No. 1.1 of Directive 2014/31/EU are not only used in combination with the verbs "anbringen" (affix) or "tragen" (apposer) or "bear" (porter), but in No. 1.4 of the Annex – specifically with reference to the information on maximum load, minimum load, and verification scale interval, which are the sole subject of dispute – also with the verb "show" (apparaître), i.e., the German "zeigen" (show) or "erscheinen" (appear).

In English, it reads:

"The inscriptions Max, Min, e, and d, shall also be shown near the display of the result if they are not already located there."

In French:

"Les inscriptions Max, Min, e et d apparaissent également à proximité de l'affichage du résultat, si elles ne figurent pas déjà à cet endroit."

According to this, the focus is on where the inscriptions or labels are to be seen, but not on how they are affixed or "written on". Translated into German, the inscriptions Max, Min, e and d should then also be shown or appear near the display of the result, if they are not already there. The wording of the English and French language versions therefore includes more clearly than the German version the possibility of "localizing" the visible metrological values for maximum capacity, minimum capacity, the verification scale interval and the scale interval exclusively in the vicinity of or on the weight display on a suitable device. This can also be done by means of digital lettering on a display.

A comparison of the German, English and French language versions of the Directive also shows that the requirement of permanent inscription or marking is not to be understood here in the sense of permanent visibility, but is rather used as a synonym for the term "indelible". This is suggested by the English and French language versions, each with this meaning, by using the terms "indelibly" and "indélébile" respectively. The term "indelibly", on the other hand, cannot be understood solely in the sense that an inscription must be visible without interruption. It is also to be understood in consideration of the synonymous term "permanent" in the German version, which in its main meaning means "lasting over a long period of time, enduring" or "existing, preserving its condition, persisting, with and (more rarely) without temporal provisions",

see Duden, online dictionary, meaning, "dauerhaft", available at https://www.duden.de/rechtschreibung/dauerhaft#bedeutung; Wahrig, Wörterbuch der deutschen Sprache, 5th ed. 2012, "dauerhaft"; in detail J. Grimm/W. Grimm, Deutsches Wörterbuch, Neubearbeitung (A-F), vol. 6, digitized version in the dictionary network of the Trier Center for Digital Humanities, version 01/21, "dauerhaft", available at https://www.woerterbuchnetz.de/DWB2?lemid=D03426, in conjunction with "[1]dauern A", available at https://www.woerterbuchnetz.de/DWB2?lemid=D03434,

the emphasis is rather on the fact that the inscription or lettering must not be able to be erased over a long period of time and must be permanent. With such an understanding of the term - which is also supported by the fact that the wording of the Directive does not require a "permanently visible" marking according to any language version, but "visible" and "indelible" are each named as independent requirements - a digital representation in the weight display can guarantee the required indelibility or permanence. In terms of technology, such a display is an "adequate facility" within the meaning of Annex III No. 1.1, 1.2 and 1.4 of Directive 2014/31/EU, on which the inscription or labeling is visibly and legibly located "anyway" ("located there", "figurent [...] à cet endroit"). The essential device-specific requirements for such a digital display result from Annex I of Directive 2014/31/EU because it is a design-related technical solution.

In order for such a digital display to be permanent or indelible and therefore "suitable" for inscription or labeling, the manufacturer must ensure during the design and manufacture of the device that the software responsible for displaying the metrological values is protected against unintentional misuse in accordance with the requirements of Annex I of Directive 2014/31/EU and that any alteration of the displayed metrological values is prevented. There was no need for more detailed explanations in the text of the Directive in this regard. According to Article 6(1) of Directive 2014/31/EU, when placing on the market instruments intended to be used for the application listed in Article 1(2)(a) to (f), the manufacturer shall ensure that they have been designed and manufactured in accordance with the essential requirements set out in Annex I. The essential requirements in Annex I of the Directive concern the essential metrological and technical requirements for non-automatic weighing instruments (see recital 17 of Directive 2014/31/EU). If the manufacturer decides to have the Max, Min and e values displayed digitally using the device's own software, the essential technical requirements in Annex I of the Directive must also be fulfilled in relation to this design. The guarantee of sufficient protection against misuse against unauthorized deletion, in turn, is required by Directive 2014/31/EU in Annex I, which is also directly applicable under national law in accordance with Section 8 No. 11 MessEV in conjunction with Annex 3 Table 1 Column 3, as a general requirement under No. 8 of Annex I to Directive 2014/31/EU. According to Annex I No. 8.5 of Directive 2014/31/EU, the instruments shall have no characteristics likely to facilitate fraudulent use, whereas possibilities for unintentional misuse shall be minimal. Components that may not be dismantled or adjusted by the user shall be secured against such actions. If the display of Max, Min and e is carried out via software, this obligation extends to this by design.

It is also necessary that the inscriptions in accordance with Annex III No. 1.1 of Directive 2014/31/EU are clearly visible. However, this does not imply that the inscriptions must be clearly visible regardless of the operating status of the weighing instruments. This cannot be inferred from Annex III No. 1.2 sentence 2 of Directive 2014/31/EU either. According to this, the device for affixing the inscriptions must be designed in such a way that the inscriptions are visible when the appliance is in its normal operating position (in English "regular operating position", in French "position de fonctionnement normal"). This shows the intention of the Directive's issuer that the labels must be clearly visible when the weighing instruments are correctly positioned for use. However, the requirement does not address the issue of visibility of the markings regardless of the operating status of the weighing instruments.

Furthermore, an exclusively digital display of the metrological values at issue here is not precluded by the fact that the inscriptions in accordance with Annex III No. 1.2 sentence 2 of Directive 2014/31/EU shall not be removable without being damaged. This requirement is already met for a display that is secured against alteration by the fact that it cannot be removed without destroying the display or the securing. The additional

requirements according to Annex III No. 1.3 of Directive 2014/31/EU expressly only apply if an identification plate is used. If another "adequate facility" within the meaning of No. 1.2 is selected, they do not have to be additionally observed. Only if an identification plate is used must it be possible to secure it, unless it cannot be removed without being destroyed. If the identification plate can be secured, it must be possible to affix a security stamp. These requirements are only aimed at preventing possible misuse by transferring the inscriptions on identification plates. Irrespective of the fact that No. 1.3 only contains specifications for the optional use of identification plates and that the risk of transferring inscriptions does not exist from the outset for factual reasons in the case of exclusively digital representation, access to the software on the hardware can also be secured by an adjustment lock and a security stamp, thus preventing the software from being accessed unnoticed in accordance with the requirements of Annex I of Directive 2014/31/EU.

Finally, the need for a physical analog inscription of Max, Min and e does not arise from Annex III No. 1.5 of Directive 2014/31/EU. According to this, every weighing instrument that is connected or can be connected to one or more load receptors must also have the corresponding inscriptions for these load receptors. This is easily possible with a digital display of the disputed metrological values of the specific load receptor used in the display of the weighing device.

bb) This broad, technology-open understanding of the term is clearly confirmed by the legislative history of the standard. In this respect, when interpreting the Directive, it cannot be disregarded that the European Union was already bound under international law to the Agreement on Technical Barriers to Trade (hereinafter: TBT Agreement) of the World Trade Organization (WTO) with regard to the part falling within its competence (see Annex 1, 1A to Council Decision 94/800/EC of 22.12.1994, OJ L 336, 23.12.1994, p. 86). Accordingly, the Union, as a contracting party, generally uses relevant international standards as the basis for its technical regulations (see Article 2.4 of the TBT Agreement). The agreement thus pursues the objective underlying Directive 2014/31/EU of eliminating barriers to trade by means of standardized device-specific requirements, among other things. The international standardization organizations within the meaning of the WTO TBT Agreement include the International Organization of Legal Metrology (OIML), which issues recommendations on the technical requirements for non-automatic weighing instruments.

See OIML, International Recommendation R 76-1, Edition 2006 (E); see also https://www.oiml.org/en/about/about-oiml.

The exclusively digital display of the metrological values for Max, Min and e was already recognized by the OIML as a technically acceptable solution long before the adoption of Directive 2014/31/EU [see (1)]. In view of this, and also with regard to the intended restriction to the requirements for non-automatic weighing instruments necessary for

the protection of the general public in the Directive, there would need to be clear indications that the legislator of the Directive wanted to regulate the presentation of the metrological values at issue here in a way that deviated from the recommendations contained in the international technical regulations, which are also binding in principle for the Union. However, this is not the case [see (2)].

(1) Among other things, the OIML issues recommendations on the metrological and technical requirements of non-automatic weighing instruments (R 76-1) and expressly addresses the requirements for descriptive markings on the instrument, which also include the metrological values for Max, Min and e at issue here. In the 1988 version, the presentation of these markings under no. 7.1.4 initially only stated the following:

"The discriptive markings shall be indelible and of a size, shape and clarity allowing easy reading. They shall be grouped together in a clearly visible place either on a descriptive plate fixed to an instrument, or on a part of the instrument itself. The markings: Max ... , Min ... , e ..., and d [...] shall also be shown near the display of the result if they are not already located there."

The question of whether an exclusively digital display of these metrological values is also an acceptable solution has already been addressed by the OIML in its Recommendation R 76-1, Edition 2006, which is still authoritative today. It now states:

7.1 Descriptive markings

7.1 Descriptive markings

[...]

An instrument shall carry the following markings

7.1.1 Compulsory in all cases

- Manufacturer’s mark, or name written in full (A)
- Metrological markings (B):
  - [...]
  - Maximum capacity in the form: Max ...
  - Minimum capacity in the form: Min ...
  - Verification scale interval in the form: e = ...

7.1.2 Compulsory if applicable

- Name or mark of manufacturer‘s agent for an imported instrument (C);
- Serial number (D);
- Identification mark on each unit of an instrument consisting of separate but associated units (E);

- Type approval mark (F);
- Supplementary metrological characteristics (G): [...]
- Special Limits (H) [...]

[...]

7.1.4 Presentation of descriptive markings

The descriptive markings shall be indelible and of a size, shape and clarity allowing easy reading.

They shall be grouped in one or two clearly visible places either on a plate or sticker fixed permanently to the instrument, or on a non removable part of the instrument itself. In case of a plate or sticker which is not destroyed when removed, a means of securing shall be provided, e.g. a control mark that can be applied.

As an alternative all applicable [metrological markings Nr. 7.1.1 (B) and supplementary metrological characteristics 7.1.2 (G)] may be simultaneously displayed by a software solution either permanently or on manual command. In this case the markings are considered as device-specific parameters (see T.2.8.4, 4.1.2.4 and 5.5).

The markings: Max ..., Min ..., e = ..., and d = ... if d ≠ e shall be shown at least in one place and permanently either on the display or near to the display in a clearly visible position. All additional information [...] may be shown alternatively on a plate or simultaneously displayed by a software solution either permanently or accessed by a simple manual command. In this case the markings are considered as device-specific parameters (see T.2.8.4, 4.1.2.4 and 5.5).

It shall be possible to seal the plate bearing the descriptive markings unless its removal will result in its destruction. If the data plate is sealed, it shall be possible to apply a control mark to it.

Acceptable solutions:

a) Marking of Max, Min, e ... and d if d . e:

These values are permanently and simultaneously shown on the display of the weighing result as long as the instrument is switched on.

They may be automatically scrolled (displayed alternating one after each other) in one display. Automatically scrolling (but not on manual command) is considered as "permanently". [...]"

Since 2006, the OIML has made a clear distinction between markings that are used for traceability [manufacturer information, no. 7.1.1 (A)] and identification of the devices [serial number, etc., no. 7.1.2 (C) to (F)], and markings for metrological characteristics

[no. 7.1.1 (B), no. 7.1.2 (G)]. The former must be affixed to an identification plate or permanently attached directly to the device. The information on the metrological characteristics of the weighing instrument, on the other hand, can be displayed permanently or manually at the same time using a software solution as an alternative to the option of printing them on a label or sticker. In this case, the labels are to be treated as device-specific parameters [see T.2.8.4 OMIL R 76-1, Edition 2006)] and it is required that measures to secure the software are provided in accordance with No. 4.1.2.4 and 5.5 of the recommendation. The information on the maximum capacity, minimum capacity and the verification scale interval in particular should be positioned at least once together and permanently visible either in the display or in the vicinity of the display. As an acceptable solution for this single - and not additional - display, it is accepted if these values are permanently and simultaneously displayed on the weighing result display as long as the weighing instrument is switched on. The values may also be automatically scrolled (displayed alternately one after the other) on a display device. Automatic scrolling (i.e. not on manual command) is considered "permanent".

(2) With the OIML recommendation, an international standard on the metrological and technical requirements for non-automatic weighing instruments has been developed, the essential parts of which had to be taken as a basis by the issuer of the Directive in view of its obligations under international law to remove barriers to trade when legislating.

With regard to international metrological standards, see: European Commission, Measuring instruments - Guidance documents, available at https://single-market-economy.ec.europa.eu/single-market/goods/building-blocks/legal-metrology/measuring-instruments_en.

It is not even remotely apparent that the legislator of the Directive intended to deviate from the recommendations of the OIML with regard to the implementation options for the presentation of the metrological values at issue here, which have long been recognized as acceptable there, in a restrictive manner with Directive 2014/31/EU. It is true that the predecessor Directive 2009/23/EC (Annex IV No. 1.4) and Directive 2014/31/EU (Annex III No. 1.4) obviously still adopted the wording of OIML Recommendation R 76-1 from 1988 instead of the current version with regard to the presentation of the metrological values for Max, Min and e. However, due to the very broad wording of the Directive, which is open to new technologies, as explained in detail above, it cannot be concluded from this that the legislator of the Directive did not want to allow expressly recognized technical implementation forms to apply at international level when adopting Directive 2014/31/EU, which would have created international barriers to trade for the European internal market contrary to the declared intention.

Similarly, nothing deviating can be derived from the fact that the current OIML recommendation had not yet been incorporated into the then valid version of the

harmonized standard DIN EN 45501 when the Directive was issued in February 2014. The issuer of the Directive expressly emphasizes compliance with international standards in the rules on harmonized standards in accordance with Regulation (EU) 1025/2012, which are also of particular importance under Directive 2014/31/EU. The harmonized standards reflect technical implementation forms that are generally recognized as acceptable in relation to the device-specific requirements. Irrespective of the presumption of conformity regulated in Art. 12 of Directive 2014/31/EU solely in relation to the essential requirements according to Annex I of the Directive in the case of conformity with the harmonized standard, European standardization in its entirety serves a uniform implementation of device-specific requirements harmonized under Union law with the involvement of all interested parties (see Recital 2 of Regulation (EU) 1025/2012). It is therefore not only of key importance for the internal market (see recitals 3, 5 of Regulation (EU) 1025/2012), it is also intended to strengthen the global competitiveness of European industry, in particular by coordinating with the international standardization organizations (see recitals 3, 6 of Regulation (EU) 1025/2012). In this respect, international standards themselves can be regarded as harmonized standards within the meaning of Art. 2 para. 1 lit. c) of Regulation (EU) 1025/2012. In any case, however, they must be taken into account when formulating European standards. This has been done here. The OIML recommendation R 76-1, 2006 edition, has been incorporated into the harmonized standard DIN EN 45501:2015 for the European single market. By adopting this standard in implementation of Directive 2014/31/EU, the legislator clarified the regulatory intention to understand the Directive in the light of international recommendations under European law even before the transposition deadline expired. Specifically, the revision of the technical standard DIN EN 45501:1992, which was originally issued for this purpose, was already carried out with regard to OIML Recommendation R 76-1, Edition 2006, while the predecessor Directive 2009/23/EC, which was only repealed with effect from 20.4.2016 in accordance with Art. 45 of Directive 2014/31/EU, was still in force. The revised standard EN 45501:2015 was published on 11.9.2015 (OJ C 300, 11.9.2015, p. 3) as part of the transposition of the predecessor Directive before the transposition deadline for Directive 2014/31/EU, which also expired on 20.4.2016 in accordance with Art. 44 of Directive 2014/31/EU, with the comment that the new (or amended) standard has the same scope as the superseded standard. As of 19.4.2016, the superseded standard no longer confers a presumption of conformity with the essential or other requirements of the relevant Union legislation. The first publication of the European standard EN 45501:2015 on metrological aspects of non-automatic weighing instruments then took place on 15.1.2016 as part of the implementation of Directive 2014/31/EU (OJ C 14, 15.1.2016, p. 100). Following the publication already made in the implementation of the previous Directive, it was thereby expressed that the European standard EN 45501:2015 should apply from the first day after expiry of the transposition deadline of Directive 2014/31/EU instead of EN 45501:1992, which was still applicable until 19.4.2016 in

relation to Directive 2009/23/EC. Devices that comply with DIN EN 45501:2015 are therefore presumed to comply with essential safety requirements in accordance with Annex I, which are covered by the harmonized technical standard or parts thereof, in accordance with Article 12 of Directive 2014/31/EU (Section 7 (1) sentence 1 no. 1 MessEV).

In accordance with OIML Recommendation R 76-1, Edition 2006, No. 7.1.1, Table 15, Column 5, DIN EN 45501:2015, the metrological values for the maximum capacity, minimum capacity and the verification scale interval "may be simultaneously displayed by a software solution, see 7.1.2". According to No. 7.1.2. inscriptions must be indelible and of a size, shape and clarity allowing easy reading. They shall be located in clearly visible places and fixed permanently to the instrument, or on a nonremovable part of the instrument itself. As an alternative, as well as to a plate or sticker, all applicable markings in column 5 of Table 15 may be simultaneously displayed by a software solution either permanently or on manual command. In this case the markings are considered as device-specific parameters (see T.2.8.4, 4.1.2.4 and 5.5).

The markings: Max ...,
Min ...,
e = ..., and
d = ... if d ≠ e
shall be shown at least in one place and permanently either on the display or near to the display in a clearly visible position and need not be repeated elsewhere.

An acceptable solution that meets these requirements is to display these values permanently and simultaneously on the display of the weighing result as long as the instrument is switched on. They may be automatically scrolled (displayed alternating one after each other) in one display. Automatically scrolling (but not on manual command) is considered as “permanently”.

In anticipation of this European standardization of international technical standards in accordance with Regulation 1025/2012/EU, the European Cooperation in Legal Metrology (WELMEC), an association registered in Germany and based in Braunschweig, which, long before its foundation in 1990, at the same time as the first Non-automatic Weighing Instruments Directive (NAWID), was initially set up by 18 states with the aim of promoting the exchange of information across national borders, the uniform application of European or international regulations and the removal of barriers to trade in measuring instruments, and whose activities are expressly endorsed by the European Commission, particularly in the development of recommendations for the implementation of the Metrology Directive, cf. Commission statement, 20th WELMEC Committee Meeting, Casta Papernicka - Slovakia, 13-14.5.2004, available at: https://ec.europa.eu/docsroom/documents/6535/.

In its foreword to Guide 2 to Directive 2009/23/EC (2015), WELMEC pointed out that the OIML Recommendation R 76-1, Edition 2006, had not yet been finally adopted into

European Standard EN 45501 at the time of its drafting and had already directly followed the OIML recommendations on the display options of Max, Min and e in No. 3.1.15.

WELMEC Guideline 2 (2015) is still considered relevant in this form by WELMEC under the validity of Directive 2014/31/EU, see WELMEC, Directives 2014/31/EU and 2014/32/EU: Common Application, Guideline 2 (2021), p. 5.

cc) Finally, a broad understanding of the term, taking into account the international standards formulated in OIML Recommendation R 76-1, 2006 edition, is in line with the legislator's intention, expressed in recitals 17 and 47 of Directive 2014/31/EU, to limit itself to the essential metrological and technical requirements relating to non-automatic weighing instruments used for specific purposes.

Cf. also European Commission, Guide to the implementation of EU product rules 2016 ("Blue Guide"), OJ C 272, 26.7.2016, p. 1, No. 1.1.3 with reference to ECJ, judgment of 20.2.1979 - C-120/78 -, ECR 1979, 649= juris, para. 8.

These essential technical requirements, which the Directive intended to harmonize in order to protect the general public from incorrect weighing results (recital 5), to ensure fair competition on the Union market (recital 7) by means of conformity assessment at a uniform level of quality throughout the Union (recitals 26 and 27) without unnecessary burden for economic operators (recital 17) (recital 33), are contained in Annex I. This is in line with the principle of the free movement of goods. This corresponds to the limitation of the harmonization of Union law to those requirements that are suitable for achieving the objective pursued by the Directive and do not go beyond what is necessary to achieve it, in line with the free movement of goods (Art. 34 et seq. TFEU, cf. also Art. 5 of Directive 2014/31/EU) and the principle of proportionality in recital 47.

Cf. ECJ, judgment of 12.12.2006 - C-380/03 -, ECR 2006, I-11573 = juris, para. 144, with further references. N.

The intention to limit harmonization in principle to the essential technical requirements in Annex I of Directive 2014/31/EU is not contradicted by the fact that provisions on inscriptions relating, inter alia, to the maximum capacity, minimum capacity and verification scale interval have been included in a separate Annex III. These requirements for non-automatic weighing instruments are in fact open-technology requirements specified by international standards. A non-technical implementation option is, for example, the use of an identification plate. In the case of a technical solution, the device-specific requirements set out in Annex I to Directive 2014/31/EU must be complied with.

The rules at issue here concerning the labels relating to the maximum capacity, minimum capacity and verification scale interval also serve to protect the general public from incorrect weighing results in accordance with recital 5 of Directive 2014/31/EU. However, there is no discernible regulatory intention to go beyond internationally

recognized standards with this protection or to impose more stringent requirements under EU law for better monitoring by the authorities. On the contrary, the simple adoption of international technical standards proves that these are not intended to be special quality standards for the European internal market. In order to protect the general public from incorrect weighing results, the general international requirements in addition to the essential technical requirements set out in Annex I appeared to be sufficient, necessary and proportionate to achieve the objectives of the Directive, because they were intended to implement international technical standards to remove technical barriers to trade and to ensure fair competition on the Union market, without at the same time disproportionately hindering the provision of instruments on the market (cf. Art. 5 (1) of Directive 2014/31/EU).

See recitals 47 and 7 of Directive 2014/31/EU.

With regard to the inscriptions to be provided, these objectives are achieved equally throughout the EU if the rule is understood to mean that no further-reaching requirements are derived from certain, in themselves ambiguous, formulations of individual language versions of the Directive over and above the international technical standards.

Ultimately, the metrological values on the Union market as well as internationally are intended to provide information on the upper and lower limits of the weighing range and the accuracy tolerance of a weighing instrument. They are therefore particularly important for the user, which is also expressed in Annex III No. 1.4 of Directive 2014/31/EU, according to which the indications Max, Min, e and d must also be placed near the weight display if they are not already there. This ensures that the information is always visible to the user during the weighing process and that the measuring instrument within the meaning of Section 23 (1) no. 1 lit. c) MessEV is used within the permissible measuring range. For this purpose, it is sufficient for the information to appear digitally on the display device. There are no reasons that require the information to be permanently visible even when the scales are switched off, neither in the text of the Directive nor in the regulatory intention expressed therein. In particular, the information does not serve to identify the weighing instruments. To this end, the first subparagraph of Article 6(5) of Directive 2014/31/EU requires the manufacturer to ensure that weighing instruments placed on the market by him bear a type, batch or serial number or other means of identification in accordance with Annex III to the Directive.

For the identification requirements, see also Notice of the European Commission, Guide to the implementation of EU product rules 2016 ("Blue Guide"), OJ C 272, 26.7.2016, p. 1, No. 4.2.

The metrological values in dispute - unlike the inscriptions on the manufacturer's name and address, cf. Art. 6 para. 6 and recitals 6 and 16 of Directive 2014/31/EU - are also not used for the traceability of an instrument.

See also Commission Notice, Guidelines for economic operators and market surveillance authorities on the practical implementation of Article 4 of Regulation (EU) 2019/1020 on market surveillance and compliance of products - OJ C 100, 23.3.2012, p. 1, No. 2.3.

In this respect, the decision of the Federal Court of Justice of 9 July 2015 - I ZR 224/13 - cited by the defendant is unproductive for the present case because it deals with the question of whether the marking of the manufacturer of headphones has been permanently affixed in accordance with the requirements of Section 9 ElektroG (formerly Section 7 ElektroG), whereby the regulation serves the purpose of being able to identify old appliances with a view to the manufacturer's take-back obligation and thus preventing the collective community from being called upon.

See BGH, judgment of 9.7.2015 - I ZR 224/13 -, juris, para. 15.

Furthermore, a digital display of the metrological values at issue does not raise any concerns with regard to effective monitoring by the market surveillance authority. Neither the Directive nor Regulation (EU) 2019/1020 on market surveillance and compliance of products, which also applies to products within the meaning of Directive 2014/31/EU, contain any indication that these labels should therefore be designed in a special way to facilitate the exercise of market surveillance. Article 4 of Regulation (EU) 2019/1020 primarily sets out the tasks of economic operators in relation to the provision of contact details, the availability of declarations of conformity, the technical documentation to be drawn up and cooperation with the market surveillance authority.

See Commission Notice, Guidance for economic operators and market surveillance authorities on the practical implementation of Article 4 of Regulation (EU) 2019/1020 on market surveillance and compliance of products, OJ C 100, 23.3.2021, p. 1, No. 3.

According to recitals 32 to 34 of Regulation (EU) 2019/1020, market surveillance should be thorough and effective to ensure that Union harmonization legislation on products is properly applied. However, given that verifications can be burdensome for economic operators, surveillance measures should be limited to what is necessary. At the same time, the exchange of information between the authorities of the Member States should ensure that harmonization legislation is enforced as uniformly as possible throughout the Union. In order to meet these requirements in equal measure, Article 11(3) of Regulation (EU) 2019/1020 stipulates that market surveillance authorities shall, as part of their activities, carry out appropriate checks on the characteristics of products to an appropriate extent, primarily by checking the documentation and (only) carrying out physical and laboratory checks where necessary on the basis of appropriate samples.

When deciding which types of products should be subject to which inspections and to what extent, they follow a risk-based approach. In doing so, they must take due account of test reports and certificates of conformity in accordance with Art. 11 Para. 5 of Regulation (EU) 2019/1020, also in relation to non-automatic weighing instruments within the meaning of Directive 2014/31/EU. This is already the case because the conformity assessment bodies, in accordance with recitals 26, 27 and 33 of Directive 2014/31/EU, are responsible for ensuring a uniform level of quality in conformity assessment throughout the Union. For products that are to be imported into the EU, the European Commission (only) recommends that customs authorities check whether the name and contact details of the economic operator are indicated on the product, its packaging, the package or an accompanying document in accordance with Art. 4 of Regulation (EU) 2019/1020.

See Commission Notice, Guidance for economic operators and market surveillance authorities on the practical implementation of Article 4 of Regulation (EU) 2019/1020 on market surveillance and compliance of products, OJ C 100, 23.3.2021, p. 1, No. 5.2.

The general provisions on market surveillance do not provide any indication of a need for regulation under EU law regarding the readability of the disputed metrological values at all times, regardless of the available power supply, for example in port containers.

Nor can it be inferred from Directive 2014/31/EU that, for the purposes of market surveillance, the perceptibility of the metrological values at issue should be made easier under EU law compared to international technical standards. Proof that an instrument intended to be used for the purposes specified in Article 1(2)(a) to (f) of Directive 2014/31/EU complies with the requirements of Annex I of the Directive is generally provided by the manufacturer by means of the conformity assessment procedure for which an EU Declaration of Conformity is issued (see Article 6(2)(2) in conjunction with (1) of Directive 2014/31/EU). According to recitals 23, 26, 27 and 33 of Directive 2014/31/EU, the affixing of the CE marking and the supplementary metrology marking on the respective device is intended to express the conformity of a non-automatic weighing instrument, thereby avoiding unnecessary effort for economic operators. Accordingly, recital 22 of Directive 2014/31/EU clarifies that the EU declaration of conformity provides effective access to information for the purposes of market surveillance. In this sense, in accordance with the first sentence of Article 6(9) of Directive 2014/31/EU, manufacturers shall, further to a reasoned request from the competent national authorities, provide them with all the information and documentation necessary to demonstrate the conformity of the appliance with the Directive.

If the metrological values for Max, Min and e are only shown on the display of the weighing instrument during operation, the proof of the conformity assessment procedure according to § 6 para. 3 sentence 1 MessEG in conjunction with § 9 para. 1 sentences 1 and 2 MessEV in conjunction with Annex 3 Table 1 column 4 and Annex 4

MessEV also covers, depending on the design, whether the device-specific essential requirements according to Annex I of Directive 2014/31/EU are fulfilled in relation to this. The technical requirements for the durability - required in terms of the intended use of the device for a normal period of time within the meaning of Annex I No. 8.3 of Directive 2014/31/EU - are based on the normative clarification in this respect in No. 7.1.2 DIN EN 45501:2015 in accordance with the specifications on device-specific parameters that should be ensured (unchangeable characteristic values) within the meaning of No. T.2.8.4 For these device-specific parameters, the essential requirements according to Annex I of Directive 2014/31/EU also apply, to which the presumption of conformity according to Art. 12 of Directive 2014/31/EU (§ 7 para. 1 MessEG) refers in case of conformity with the specifications of DIN EN 45501:2015. The EU type-examination certificate must indicate conformity with the requirements applicable to the digital display of metrological values in accordance with Annex I of the Directive. Therefore, if there is no analog inscription on a device to be tested, its conformity with the Directive can already be correctly inferred from the EU type-examination certificate without switching on the instrument. Only in the case of an analog inscription is this alone sufficient for effective testing by the market surveillance authority. Apart from this, if there is - at most exceptionally - a concrete suspicion that a design does not comply with the EU type examination certificate, an instrument can also be put into operation for the inspection at short notice. There is nothing to suggest that stricter standards should apply to a check (only) carried out in exceptional cases in accordance with the necessary risk-based approach as to whether the weighing instruments have the required Max, Min and e inscriptions.

The same applies with regard to the import of weighing instruments for free circulation, which, however, is not at issue here. According to Art. 8 Para. 1 of Directive 2014/31/EU, importers may only place instruments on the market that comply with the Directive. However, the Directive does not provide for each individual instruments to be checked for conformity with the Directive by the national authority responsible for import controls. Here too, proof of conformity is provided by a successfully completed conformity assessment procedure. Accordingly, according to Art. 8 Para. 2 of Directive 2014/31/EU, before placing such an instrument on the market, the importer must ensure that the conformity assessment procedure according to Art. 13 of Directive 2014/31/EU has been carried out by the manufacturer, that the manufacturer has drawn up the technical documentation, that the instrument bears the CE marking and the supplementary metrology marking, that it is accompanied by the required documentation and that the manufacturer has complied with the requirements of Art. 6 (5) and (6) of Directive 2014/31/EU - i.e. the marking obligations (Art. 8 (2) of Directive 2014/31/EU). The importer must keep a copy of the EU declaration of conformity available for the market surveillance authorities for a period of ten years after placing the instrument on the market and ensure that the technical documentation can be made available to them on request (Art. 8 (8) of Directive 2014/31/EU).

b) The national legislator has adopted the requirements of Directive 2014/31/EU in Section 13 (1) sentence 1 half-sentence 1 MessEV.

To the extent that Section 13 (1) Sentence 1 Clause 2 of the MessEV states – contrary to Annex III No. 1.1of Directive 2014/31/EU – that the markings and inscriptions must be clear, indelible, unambiguous, and non-transferable, this is based solely on the wording in Annex I No. 9.8 of Directive 2014/32/EU, which the rule also serves to implement, and which states that all markings and inscriptions must be clear, indelible, unambiguous, and non-transferable.

Cf. no. 13 introduction MessEV; BR-Drs. 493/14, p. 146.

The legislator has obviously simply listed the formulations from Directives 2014/31/EU and 2014/32/EU one after the other, without intending to impose requirements that go beyond the provisions of Directive 2014/31/EU with regard to the requirements for markings and inscriptions on non-automatic weighing instruments.

According to all of the above, the requirements of Sections 13 (1) sentence 1, 15 (3) sentence 2 MessEV are fulfilled here. As evidenced by the declaration submitted by NMi Certin B. V. issued on 7.7.2020, the information on Max, Min and e is shown exclusively on the display of the weighing instrument (No. 1.3 of the certificate). There they are always visible together with the measured weighing result during operation of the weighing instrument, i.e. they are located near the weight display in accordance with § 15 para. 3 sentence 2 MessEV and are clearly visible and legible in the regular operating position of the weighing instrument within the meaning of § 13 para. 1 sentence 1 MessEV. There are no indications that the information is unclear. Furthermore, the plaintiff has ensured the required durability in the form of legally sufficient protection against misuse. The information is permanent, indelible and non-transferable in the sense described. According to the EU type examination certificate, access to the software is secured by security seals. There is an adjustment lock inside the housing of the weighing platform. The plaintiff has thus taken the necessary measures, in accordance with Annex I No. 8.5 of Directive 2014/31/EU, which is applicable pursuant to Section 6 (2) of the MessEG in conjunction with Section 8 (1) No. 11 in conjunction with Annex 3, Table 1, Column 3 of the MessEV, to minimize the possibility of unintentional misuse. The technical implementation of the digital indication of the metrological values in dispute here complies with the requirements of the harmonized standard DIN EN 4551:2015, so that the presumption of conformity of Section 7 (1) sentence 1 no. 1 MessEG applies in this respect.

II If the prohibition order in no. 1 of the contested decision proves to be unlawful, the threat of direct coercion in the event of non-compliance with the prohibition order in no. 2 of the contested administrative order of the state authority is also unlawful.

The decision on costs follows from Section 154 (1) VwGO.

The decision on provisional enforceability is based on § 167 VwGO in conjunction with § 708 No. 10, 711 ZPO.

The appeal must be allowed due to the fundamental importance of the case, section 132 (2) no. 1 VwGO. The legal questions associated with the proceedings are not only relevant for the parties involved in the specific proceedings, but also for other market surveillance authorities and manufacturers of similar devices.