

# CECIP Update from Europe

Max, Min, e

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# What are we talking about?

## Legal basis 2014/31/EU (NAWID)

### » ANNEX III – INSCRIPTIONS

- 1. Instruments intended to be used for the applications listed in points (a) to (f) of Article 1(2)
- 1.1. Those instruments shall bear **visibly, legibly and indelibly** the following inscriptions:...
- (iv) maximum capacity, in the form **Max** ...;
- (v) minimum capacity, in the form **Min** ...;
- (vi) verification scale interval, in the form **e** = ...;
- ...

## 2014/31/EU

### » ANNEX III – INSCRIPTIONS

- 1.2. Those instruments shall have adequate facilities for the affixing of the conformity marking and inscriptions. These shall be such that it shall be impossible to remove the conformity marking and inscriptions without damaging them, and that the conformity marking and inscriptions shall be visible when the instrument is in its regular operating position.
- 1.3. Where a data plate is used it shall be possible to seal the plate unless it cannot be removed without being destroyed. If the data plate is sealable it shall be possible to apply a control mark to it.
- 1.4. The inscriptions Max, Min, e, and d, shall also be shown near the display of the result if they are not already located there.

# What about EN 45501?



## 7.1.2 Presentation of markings and inscriptions

- » Lays down requirements
  - for plates and stickers
  - for a software solution for Max, Min, e, d
  - Including acceptable solutions
    - Permanently and simultaneously on a display only, as long as the instrument is switched on
    - Automatic scrolling
  - Marking for multi-interval and multi range instruments

## What about WELMEC?

WELMEC is a cooperation between the **legal metrology authorities** of the Member States of the European Union and EFTA.

Guides are published by WELMEC to provide **guidance** to **manufacturers of measuring instruments** and to **Notified Bodies** responsible for conformity assessment of their products.

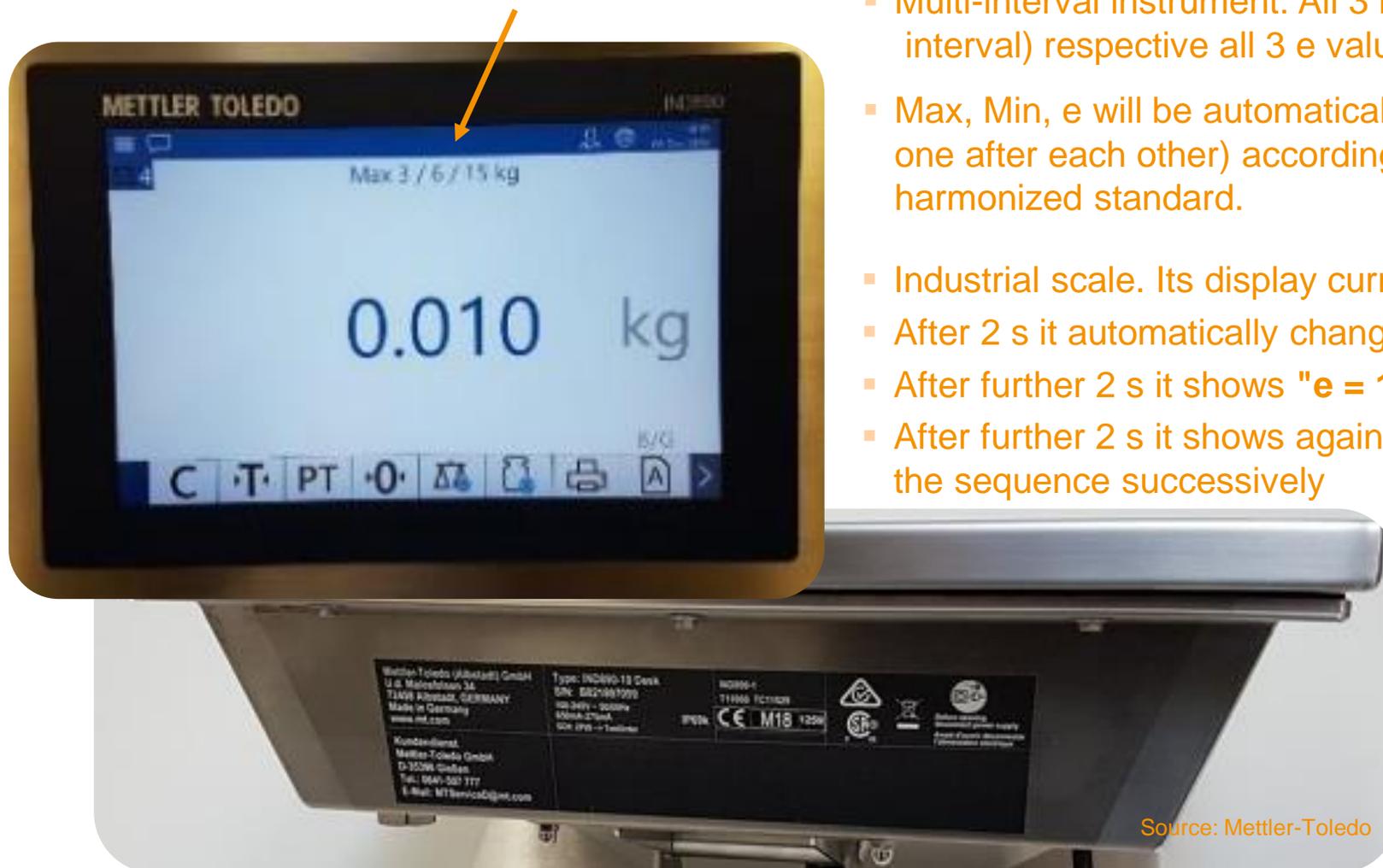
The **Guides** are **purely advisory** and do not themselves impose any restrictions or additional technical requirements beyond those contained in relevant EU Directives.

**Alternative approaches may be acceptable**, but the guidance provided in this document represents the considered **view of WELMEC** as to the best practice to be followed.

## Welmecc Guide 2 (2015), 3.1.15 Max, Min, e and d, and other markings/inscriptions

- » Where the inscriptions Max, Min, e and d are provided near to, or on, the display, **it is not necessary for them to be additionally marked on the data plate**
- » A table is given to advise on the type of presentation
  - Max, Min, e (if appropriate d) are categorized as “B”
  - “B” = *Data may be presented either on a data plate (ie by hardware) or in the display (ie by software). In the latter case the data must be **permanently displayed**, but it is **acceptable** for the Max, Min, e (and d if appropriate) to be **permanently displayed scrolling sequentially***
- » Software containing these markings/inscriptions must be **secured** from unauthorised access or changes
- » Details of the markings/inscriptions contained in software must be declared in the TAC

## What are we talking about – Practical example?



- Multi-interval instrument: All 3 Max values (1 for each interval) respective all 3 e values must be shown
- Max, Min, e will be automatically scrolled (displayed alternating one after each other) according to the acceptable solution of the harmonized standard.
- Industrial scale. Its display currently shows "**Max 3 / 6 / 15 kg**".
- After 2 s it automatically changes to "**Min = 20 g**".
- After further 2 s it shows "**e = 1 / 2 / 5 g**".
- After further 2 s it shows again "**Max 3 / 6 / 15 kg**" repeating the sequence successively

Source: Mettler-Toledo

# Market surveillance in North Rine-Westfalia (LBME NRW)



## Administrative order by LBME NRW, April 2020

- » Showing the inscriptions in a display alone is not sufficient
- » In addition, a label is required to fulfil the requirement „indelibly“
- » Placing weighing instruments on the market in NRW not fulfilling this requirement is forbidden and will be fined (€ 1.000.- per scale)

## In parallel LBME NRW initiated an entry into the European ICSMS Database

- » So one regional market surveillance authority
- » Obviously without informing the responsible ministry
- » Meanwhile the German law was revised (2021) not to allow that anymore

# Request of the LBME NRW



## Request

- Together with the digital display, the German market surveillance is requesting to affix on the scales analog labels with all Max, Min, e values.



# Administrative orders by market surveillance in North Rine-Westfalia (LBME NRW)

## Two cases where legally proceeded

### Company 1

- » Type approval according to 2009/23/EC (former NAWID)

### Company 2

- » Type examination certificate according to 2014/31/EU (valid NAWID)

**Both companies have filed an appeal against the administrative order => a judicial clarification was necessary**

# Administrative Court Cologne Decision



**Software could be manipulated => reference to diesel scandal**

**The exclusive indication in the display is not considered sufficient, as**

- » Not indelible
- » Not permanent
- » Normal use position indicates the spatial position of the measuring instrument and not the use
- » For analogue inscriptions, protective provisions are made in the Directive, but not for software => this is considered to be an indication that a software solution is not envisaged

**The English, French and Spanish language versions were also checked for this evaluation.**

# Administrative Court Cologne – Result



## Legal proceedings against **company 1** were annulled by LBME

- » Otherwise, the court would have ruled against the LBME
- » Justification
  - According to 2009/23/EC, type approval by a notified body was an administrative act protecting the status quo and thus "by definition" correct
  - Conversely, this does not mean that the directive was implemented correctly

## **Company 2's** lawsuit was dismissed

- » Justification
  - Type examination according to 2014/31/EU is not legally binding for market surveillance
  - The market surveillance decides on correct or wrong implementation of the directive
  - Digital indication of the inscriptions in the display alone **is not sufficient**

The requirements have not changed between the old and new NAWID!

Appeal filed => Now issue of the Supreme Administrative Court

# Sources of knowledge Cologne Court



## European

- » 2009/23/EC
- » 2014/31/EU
- » European Court of Justice: Judgment on the European on the requirement to interpret a European standard in the light of the version of all official languages.

## German

- » MessEG
- » MessEV
- » Duden (dictionary, explanations and synonyms)
- » Hollinger/Schade (commentary to the German law – MessEG, MessEV)
- » Federal Council documents referring to German law (Bundesrats- und Bundestags-Drucksachen zu MessEG, MessEV)

## Further comments on the trial

### Sub-legislative regulations

- » Welmec
  - Does not play any role in court decision, as it is not binding
  - Was **not used** as a source of knowledge
- » EN 45501
  - Is a harmonised standard and therefore binding!
  - However, according to NAWID only for the **essential requirements according to Annex I**
  - Specifications for inscriptions are laid down in NAWID **Annex III**. The standard is not binding for this!
  - Was **not used** as a source of knowledge

# Petition to the EU Commission



**European weighing industry needs fast decision from European Commission to allow Min, Max, e alone on display to clarify the interpretation of the either/ or requirements**

- » Regarding the correct interpretation of the EU Directive, the EU Commission should quickly provide clarity and avoid further disputes throughout Europe

**Impact on weighing industry could be enormous**

- » Reduced trust in European legislative framework
  - Can we trust guides and notified bodies?
  - Is it in the interests of manufacturers to invest so much time and money in this dispute?
- » Changes to already issued certificates
- » High costs of retrofitting new and installed weighing instruments across Europe both for the industry and the consumer

# Meeting with the EU Commission



## Discussion on non-safety related inscription of Min, Max, e

- » Common practice since many years is to allow to show this information alone on display (where the data is relevant together with the weighing result)
  - This is interpreted by notified bodies, according to harmonised standards and WELMEC guides
- » Issue in this case – there is a clear misinterpretation about the aims of the legislation
  - The common and in use interpretation is an either / or - label or digital display
  - This case is interpreting that both are needed which is in conflict with the guidance

## NAWID Incriptions Min, Max, e – What is at stake?

**We would like clarification that the indisputably required indications Max, Min and e on each weighing instrument**

- » in the absence of a contrary stipulation in NAWID, are also permissible solely by means of indication on the display of the scales, and
- » there is no need for an additional presentation or sticker repeating this information

**This has been recognised in professional circles for more than 10 years, namely inter alia**

- » EN 45501 (item 7.2.1)
- » WELMEC 2 (2015), point 3.1.15

**Consequently, various Notified Bodies such as NMi (NL), METAS (CH) and PTB (DE) have been issuing corresponding conformity assessments for years**

## NAWID Incriptions Min, Max, e – What is at stake?

Accordingly, there were **prompt objections** from other EU states and their market surveillance authorities,

- » Because there the corresponding weighing instrument have been accepted as compliant with the directive for years,
- » This seems only logical in view of the explicit confirmations in the above-mentioned regulations and the related type examination certificates of the notified bodies

Such weighing instruments were also **accepted in Germany** until end of 2018

- » Moreover, before that date all the installed basis have been re-verified, in part repeatedly, by the German weights and measures authorities without any objections,
- » and thus recognised as compliant with the directive

## NAWID Incriptions Min, Max, e – What is at stake?

### The dispute initiated by the market surveillance NRW is not understandable

- » It is even more irritating that the authority and the court explicitly recognized that the "digital solution" could be permissible in principle ...
- » ..., but that it is not yet so because the EU legislator had supposedly decided otherwise when enacting Directive 2014/31/EU
  - Reference to a supposed "regulatory gap" to protect against software manipulation (as a precondition for showing Min, Max and e via software controlled display)

**However, this is not explicitly stated in Directive 2014/31/EU**

The administrative Court case raises a number of **questions about the industry's fundamental European understanding of law.**

We seek **clarity** by the EU Commission on the following issues

- » Is it the intention of the European legislator to exclude a presentation of Min, Max and e on each weighing instrument alone by software on the display (together with the weighing result)?
- » What role do normative documents such as European Harmonized Standards and WELMEC Guides play as a source of knowledge and implementation principles?
- » What is the legal significance of a conformity assessment by an accredited notified body?

## Decision No. 768/2008/EC, Justification (12)



***“The successful accomplishment of the required conformity assessment procedure enables economic operators to demonstrate and the competent authorities to ensure that products made available on the market conform to the requirements applicable.”***

# Backup



# Legal basis inscriptions – Germany (compact)

## German Law (MessEG)

- » § 15 Requirements for the conformity assessment body

## German Regulation (MessEV)

- » § 13 Common provisions for markings and inscriptions on measuring instruments and other measuring devices
- » 1. Markings and inscriptions shall be **clearly visible, legible and indelible** on the measuring instrument or other measuring device and shall be **clear, indelible, unambiguous and non-transferable**.

## ➤ Non-official translation