

**THE LEGAL IMPLICATIONS OF THE IMPLEMENTATION
OF THE FREE MOVEMENT OF GOODS IN THE EU
AND THE SITUATION OF THE ENTREPRENEUR – THE PRODUCER
AND THE USER OF MEASURING INSTRUMENTS IN POLAND**

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ABSTRACT

The article deals with the situation of entrepreneurs – users and manufacturers of measuring instruments in Poland according to the harmonization of the Polish measurement law with the EU law after Polish accession to the European Union. The essence of the free movement of goods is presented as a determinant of technical harmonization of measuring instruments in the Single Internal Market of the EU. The article depicts furthermore the valid legal procedures such as the legal metrological control and the conformity assessment. These procedures are applied to the measuring instruments introduced into the market and being used in the context of the obligations of producers and users of measuring instruments.

Key words: entrepreneur, harmonization, European Union, free movement of goods, measuring instruments, conformity assessment, legal metrological control

GENERAL COMMENTS

Poland's accession to the European Union involved introducing rules applicable on the internal European market to the Polish economy, pri-

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marily in respect of the freedoms of the market. What is of extreme importance in the context of this article is the freedom of movement of goods and the actions resulting from it, aimed to remove restrictions on trade of goods, i.e. a progressive liberalisation of services and reducing barriers of technical, standard and administrative nature in the movement of goods produced within the Internal Market. This has resulted in key changes in the Polish metrological provisions regarding the marketing and use of measuring instruments on the market, which significantly affected the legal situation of entrepreneurs producing and marketing various types of measuring instruments as well as entrepreneurs using these instruments in the course of their business activities.

In the light of the existing legal rules, introducing measuring instruments on the market and employing them is subject to prior verification as to construction and technical requirements as defined in the relevant provisions of law. Basic legal acts governing these issues are Act of Parliament of the 11th of May 2001, Law on Measures¹ and the Act of Parliament of 30th August 2002 on System of Conformity Assessment².

FREE MOVEMENT OF GOODS AS A FACTOR DETERMINING
THE SITUATION OF ENTREPRENEURS – PRODUCERS AND USERS
OF MEASURING INSTRUMENTS.

Free movement of goods is based on the assumption that any product legally manufactured or introduced on the market in accordance with the import procedures applicable in one of the Member States should be able to circulate on the entire internal market and should not encounter barriers in other Member States. This rule results from the Treaty: prohibition of customs duties, discriminatory and protectionist taxes and quantitative restrictions in trade between Member States³.

¹ Journal of Laws 2013, item 1069, consolidated text

² Journal of Laws 2014, item 1645, consolidated text

³ A. Cieśliński, *Wspólnotowe prawo gospodarcze [Community commercial law]*, Warsaw 2013, p. 273-274., A. Powałowski, *Prawo gospodarcze publiczne [Public commercial law]*, Warsaw 2012, p. 536-538.

Barriers to the free movement resulting from the differences in the national legislation can be accepted only if: the national measures are necessary to meet mandatory requirements (i.e. in respect of protection of health, safety, consumers, or the environment); they serve a legitimate purpose which justifies the omission of the free movement of goods principle; and they can be justified for legitimate aim and are proportionate to the objectives⁴.

One of the elements which have shaped the internal market was the introduction of the “new approach” to harmonisation of the EU law with the national law of the Member States in 1985, designed to implement the freedom of movement of goods. The “new approach” directives have introduced a uniform product safety rules at the Community level. The “new approach” limits the provisions of the directive to uniform and basic minimum requirements for products in terms of safety, health and environmental protection. It is necessary to meet them for the exercise of the free movement of goods on the internal market while maintaining consumer safety. Specifying the essential requirements delineated in the directives is a task of the main European standardisation bodies, including the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI). These institutions develop harmonised standards in respect of the products covered by the directives, which are then implemented in the national standards⁵. Measuring instruments are subject to technical harmonisation, which is why they are subject to the Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008, which regulates the rules of determining compliance with the “new approach” directives and obtaining CE marking on products⁶. Poland began the harmonisation process of national metro-

⁴ *The ‘Blue Guide’ on the implementation of EU product rules*, Warsaw 2014 p. 7, read you moore: M. Zdyb, *Wspólnotowe i polskie publiczne prawo gospodarcze, T.I*, [Community and polish commercial law], Warsaw 2008, p.217-220.

www.mg.gov.pl, download date 2 August 2015.

⁵ *Ibid.* p. 397-407.

⁶ European Parliament and Council Decision No 768/2008/EC of 9 July 2008 on a common framework for the marketing of products on the market, repealing Council Decision 93/465/EEC, Journal of Laws L 218/82 of 13 August 2008, A. Brzezińska- Rawa

logical regulations with the EU law in 2001, implementing both the “old” and “new approach” directives.

Act of Parliament of the 11th of May 2001, the Law on Measures, introduced the European legislation in respect of legal metrological control of measuring instruments and the requirements for them to the Polish legislation. The law implemented the provisions of the “old approach” Directive 71/316/EEC, which concerns general principles and conditions of legal metrological control of measuring instruments. On the basis of the statutory authorisations included in the directive, 18 “old approach” directives were established in the Polish legislation, focused on the type-approval and initial verification of the measuring instrument before it is introduced on the market⁷.

In respect of the metrological control of measuring instruments in Poland, the implementation of the “new approach” concept was initiated by the Act of Parliament of 30th August 2002 on System of Conformity Assessment, and the order of the Minister of Economy, Labour and Social Policy of 11 December 2003 on the essential requirements for non-automatic weighing instruments subject to conformity assessment⁸ implemented in the Council directive 90/364/EEC relating to non-automatic weighing instruments, later replaced by Directive 2009/23/EC of the European Parliament and of the Council of 23 April 2009 on non-automatic weighing instruments (NAWI)⁹. Since 1 May 2004, non-automatic weighing instruments are subject to compliance with requirements by the means of assessment procedures referred to in the order of the Minister of Economy, Labour and Social Policy of 11 December 2003 on the essential requirements for non-automatic weighing instruments subject to conformity assessment.

A., *Zadania Prezesa UOKiK w świetle ustawy o systemie oceny zgodności* [in:] *Europeizacja publicznego prawa gospodarczego*, (ed.) H. Gronkiewicz - Waltz, K. Jaroszyński, Warszawa 2011 p. 55-62.

⁷ European Parliament and Council Decision No 768/2008/EC of 9 July 2008 on a common framework for the marketing of products on the market, repealing Council Decision 93/465/EEC, O.J. EU L 218/82 of 13 August 2008.

⁸ Journal of Laws 2004, No. 4, item 23.

⁹ European Parliament and Council Directive No 2009/23/EC of 23 April 2009 on non-automatic weighing instruments, OJ EU L 122 of 16 May 2009.

Exemplifying the “new approach”, Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments (*Measuring Instruments Directive*) – MID¹⁰ – repealed on 29 October 2006 11 of the 18 “old approach” directives on measuring instruments subject to legal metrological control. These were namely Directives 71/318/EEC, 71/319/EEC, 71/348/EEC, 73/362/EEC, 75/33/EEC, 75/410/EEC, 76/891/EEC, 77/95/EEC, 77/313/EEC, 78/1031/EEC, 79/830/EEC. The MID introduced a “new approach” in relation to several types of measuring instruments. In accordance with the MID, instruments listed therein are subject to conformity assessment before being placed on the market and put into use. Implementation of the MID provisions in the Polish occurred by the means of the Act of Law of 15 December 2006 on the amendment of the act on the compliance and changes of certain laws¹¹. Pursuant to Article 10 of this Act of Law, type approval of measuring instruments subject to conformity assessment issued before 7 January 2007 on the basis of the Law of Measures shall remain valid until their expiry date. Measuring instruments placed on the market or put to use pursuant to the abovementioned decision shall be subject to initial verification and re-verification in accordance with the rules laid down in the Law on Measures. They may be presented for initial verification until the validity of these decisions expires and they must comply with the requirements which were in force before 7 January 2007.

LEGAL SITUATION OF ENTREPRENEURS – PRODUCERS OF MEASURING INSTRUMENTS PLACING THE INSTRUMENT ON THE MARKET IN THE LIGHT OF THE APPLICABLE LEGAL PROCEDURES

An essential requirement for submitting the measuring instrument to metrological control is the combination of two initial premises – a material and a formal premise. The material premise entails the use of the measuring instrument in the areas subject to legal protection. The formal premise

¹⁰ Journal of Laws The. EU L135, of 30 April 2004.

¹¹ Journal of Laws 2006, No 249, item 1834.

constitutes the indication of the relevant provisions of law in the directory of instruments subject to legal metrological control. Areas covered by legal protection are included in Article 8 (1) of Law of Measures, pursuant to which the legal metrological control involves measuring instruments which may be used in such areas as public health, public safety, public order, protection of the environment, protection of consumers, levying of taxes and duties and other fiscal charges, determining discounts, contractual penalties, wages and compensation, as well as levying and determining similar charges and benefits in customs control, in trading¹². A vast majority of these areas record a significant activity of entrepreneurs, acting as producers, importers and users of measuring instruments.

Before placing the measuring instrument on the market, the manufacturer is obliged to submit it to the appropriate verification procedures aimed to demonstrate that it meets the requirements set out in the law. The currently applicable law in this field provides two alternative procedures to this end: a legal metrological control in the form of type-approval and initial verification or unit verification pursuant to the Law of Measures, and assessment of compliance with the requirements regulated by the Act of Parliament on System of Conformity Assessment. It is the task of the manufacturer to check which regulation applies to the instrument. The principal criterion of determining the application of a particular verification procedure is the type of the measuring instrument. The implementing acts define types of instruments which are subject to particular types of legal metrological control and verification of compliance with the requirements.

Types of measuring instruments subject to legal metrological control have been indicated in the Order of the Minister of Economy of 27 December 2007¹³. Pursuant to the provisions of the order, the following types of measuring instruments are subject to legal metrological control

¹² Similarly expressed areas protected by law should be taken into account as stipulated in section 2 of Regulation Minister of Economy of 18 December 2006 on the essential requirements for measuring instruments (Journal of Laws 2007, No. 3, item 2, as amended), where trade was also mentioned.

¹³ Order of the Minister of Economy on types of measuring instruments subject to legal metrological control and the scope of this inspection of 27 December 2007, Journal of Laws 2014, item 1066, consolidated text.

involving the procedures of type approval and initial verification: tanks for liquid measurement with the exception of tanks for liquid measurement placed in a fixed position on stations liquid fuels, used exclusively for the storage of liquid; instruments for measuring the vehicle speed on the road; vehicle weighing equipment for weighing vehicles in motion; road measuring tankers; tire pressure measuring instruments for motor vehicles; grain densitometers¹⁴; as well as metal barrels and glass hydrometers – alcoholometers and alcohol hydrometers¹⁵. Control in the form of type-approval only applies to: sound-level meters; record sheets or tachograph cards; 20l reference grain densitometers, oscillatory chambers for measuring density of liquids¹⁶. The only goods subject to initial verification alone are glass hydrometers for liquids other than alcohol¹⁷.

Apart from several exceptions, the vast majority of measuring instruments subject to legal metrological control require type approval. The type of instrument is approved by administrative decision of the President of the Central Office of Measures. The type approval procedure is conducted at the request of the entrepreneur or through an authorised representative. Attached to the application is the documentation required to conduct the tests, including in particular the technical-construction documentation of the measuring instrument type and at least one copy of the measuring instrument representative of the type to be approved, or the proposal indicates the place of installation. If the data are incomplete, the President invites the applicant to complete the application within a period of 14 days from the date of service of the document. Failure to do so will result in the application not being considered.

The type examination consists of investigation of the measuring instrument in respect of its functioning capacity in all external operating conditions provided for by the manufacturer. What sets the performance criterion for the measuring instrument is the error indicator value – in the course of the examination the errors may not exceed the maximum permissible limits stipulated by relevant provisions of the law. These actions

¹⁴ Article 1 of the Order of the Minister of Economy of 27 December 2007.

¹⁵ Article 2 of the Order of the Minister of Economy of 27 December 2007.

¹⁶ Article 3 of the Order of the Minister of Economy of 27 December 2007.

¹⁷ Article 4 of the Order of the Minister of Economy of 27 December 2007.

are intended to guarantee a legally binding value of measurement accuracy obtained by the means of the measuring instruments¹⁸. The applicant may submit protocols with the results of the tests carried out by the competent metrology institutions or laboratories. Should the results confirm that the instrument type meets the necessary requirements, the Authority may reduce the examination stage to documentation analysis.

Article 8f (3) of the measures stipulates that the President of the Central Office of Measures may issue the following decisions based on the examination results:

- 1) Type approval
- 2) Type approval with restrictions, in particular with regard to the number of instruments which may be placed on the market and an obligation of the manufacturer to inform the measurement administration authorities about the installation site of the measuring instruments or to reduce their scope of application should new technical solutions be introduced in a given type of measuring instruments, not provided for in the requirements.
- 3) Refusal of type approval, should the measurement instrument not meet the requirements.

Negative or restricted decision is not final from the manufacturer's perspective – the manufacturer may request the President of the Central Office of Measures to change the earlier decision if the instrument has been modified or if new solutions have been introduced, influencing the measurement results, the conditions of proper use or technical conditions of use. The President of the Central Office of Measures can also alter the decision after a re-examination of the measuring instrument to the necessary extent.

If measuring instruments produced in accordance with the approved type are unsuitable for their intended use due to defects, the President of the Central Office of Measures issues a decision to cancel the type-approval. The President may, furthermore, cancel the type-approval if the measuring instruments are placed on the market or put to use incompatibly

¹⁸ Markiewicz K., Habich D., Popiołek W., Michniewicz E., Litwiniuk T., Ramotowski Z., Borzymiński J., Fotowicz P., Goszczyńska A. *Polska administracja miar. Vademecum [Polish Administration of Measures]*, Warsaw 2015, p.189.

with the approved type, or if they do not meet the requirements, or if the manufacturer does not comply with quantitative restrictions as indicated in the decision.

Types of measuring instruments specified in the legal provision require to be not only type-approved, but also subjected to initial verification or unit verification before being placed on the market. The validation is to check the compliance of the instrument with the requirements and is made at the request of the manufacturer, his authorised representative or the importer. The initial verification may involve examining each copy of the measuring instrument or a homogeneous batch of instruments, or by the means of a statistical method. The process of verification is conducted by the measurement administration, but it can also be carried out by authorised entities, including instrument manufacturers meeting the statutory requirements¹⁹. During the initial verification, the instrument examination is performed in respect of the conformity of the structure, materials and the metrological characteristics of the instrument with the requirements of the approved type; correct designations and markings; compliance of the construction with the technical-construction documentation (if the type approval is not required). The unit verification involves the examination of documents and the technical and metrological characteristics or a document analysis only, if the applicant has provided protocols with the test results provided by appropriate metrology institutions or authorised laboratories, confirming that the instrument meets the requirements²⁰.

If the instrument is subject only to type-approval and initial verification or unit verification, it is valid for an indefinite period of time. However, should it be found that the instrument no longer complies with the requirements, has been damaged, or the verification or protection feature has been damaged, or that the site of the instrument installation or use

¹⁹ Pursuant to Article 16a, the President of the Central Office of Measures can provide an entity with an authorisation for initial verification and re-verification of certain types of measuring instruments. Thus, the entrepreneur may conduct the verification procedures independently. Pursuant to Article 17 of the Law on Measures, entrepreneurs may create verification points, in which measuring instruments undergo verification.

²⁰ Article 8m (2) and (3) of the Law on Measures.

(where the verification was performed) has been altered, the verification status shall be nullified²¹.

Instruments subject to legal metrological control must have valid evidence to confirm their verification status. It is the responsibility of the manufacturer to provide such evidence. Should the measuring instrument only be subject to type approval, the President of the Central Office of Measures issues the type approval by the means of a favourable decision. If the instrument is subject to type approval and verification, the designation of type approval may be issued by the authority. The President of the Central Office of Measures can also determine a particular location for placing the verification and security features on the measuring instruments, in accordance with the approved type. As a result, the producer is obliged to place verification and security features on all the instruments. The verification of a measuring instrument is certified by the administration authority or an authorised entity by the means of verification evidence. Certain elements of the measuring instrument can also be protected by the means of security features, if this is necessary to prevent unauthorised access.

Conformity assessment system is universal for all products of harmonisation according to the new type directives, including the specific types of measuring instruments. In the light of Article 3 of the Act of Parliament on System of Conformity Assessment, the system comprises provisions for determining essential and detailed requirements concerning products, as well as regulations and standards governing the institutions involved in the conformity assessment process.

Conformity assessment currently applies to non-automatic weighing instruments, subject to Directive 2009/23/EC (NAWI) and categories of measuring instruments defined in Directive 2004/22/EC (MID). In the light of Article 2 of the Regulation of the Minister for Economic Affairs on the essential requirements for measuring instruments of 18 December 2006, conformity assessment applies to the following measurement instruments: water meters, gas meters, gas meter reading converters, electricity meters, heat meters, active transducers, temperature sensor pairs for heat meters, heat meter reading converters, measuring systems for continuous and dynamic measurement of quantities of liquids other than water, auto-

²¹ Article 8n (3) and (4) of the Law on Measures.

matic weighing instruments for single loads, automatic gravimetric filling instruments, automatic discontinuous totalisers, continuous totalisers, automatic rail weighbridges, taximeters, material measures of length – jigs, vessel capacity serving measures, instruments for measuring length, instruments for measuring area, instruments for measuring multiple dimensions, exhaust gas analysers.

The most important feature of the conformity assessment system, which distinguishes it from the “classic” legal metrological control, is the shift of responsibility from the state authority to the manufacturer. In the conformity assessment system it is the manufacturer or its authorised representative that declares the requirements which the product shall be subject to, and then submits the product to an assessment of the so-called essential requirements. Since essential requirements usually are set out in the directives in a rather general manner, in practice the manufacturer demonstrates the conformity of its measuring instrument on the basis of standards and specifications harmonised basing on the presumption of conformity principle²². The producer must apply the correct procedure and employ the existing technical standards at its own discretion in order to adapt the instrument to all the requirements of the directive²³. The Article 9 (1) of the Act of Parliament on System of Conformity Assessment refers to the essential requirements, including conformity assessment procedures for non-automatic weighing instruments and measuring instruments, set out in the Regulation of the Minister of Economy, Labour and Social Policy of 18 December 2003 on the essential requirements for non-automatic weighing instruments. Other measuring instruments are subject to the essential requirements of conformity assessment stipulated by the Regulation of the Minister of Economy on the essential requirements for measuring instruments.

Conformity assessment system provides a relatively large freedom of decision-making for the manufacturer in the selection of conformity

²² Markiewicz K., Habich D., Popiołek W., Michniewicz E., Litwiniuk T., Ramotowski Z., Borzymiński J., Fotowicz P., Goszczyńska A. *Polska administracja miar. Vademecum [Polish Administration of Measures]*, Warsaw 2015, p.194.

²³ A. Cieśliński, *Wspólnotowe prawo gospodarcze [Community commercial law]*, Warsaw 2013, p. 409.

assessment procedures. Eight so-called modules are delineated in the system, each of which is governed by more or less complex procedure of determining the conformity of the product with the generally described minimum requirements²⁴. Depending on the type of the measuring instrument, the manufacturer applies specific modules indicated in the executive legislation for the particular type of instrument²⁵. Most measuring instruments give the manufacturer the possibility to choose, inter alia, one of the procedures involving the following:

- 1) complete examination of a specific copy of the measuring instrument
- 2) examination of a reference copy of representing the measuring instrument (type-examination), and subsequently all copies produced in conformity with the type (an analogous procedure to the classic metrological procedures of the old approach: type approval and initial verification)
- 3) examination of a reference copy of representing the measuring instrument (type-examination), and subsequently an assessment of the production quality system in respect of the instrument with an end to prove that the system has the capacity to produce the instrument on a recurring basis, in accordance with the documentation describing the type approved during the previous stage.

In the case of measuring instruments, conformity assessment is usually carried out with the participation of a third party – a notified body (e.g.: during type approval or certification of the production quality system)²⁶.

Upon submitting the instrument to the conformity assessment and confirming its compliance with the requirements, the manufacturer is obliged to issue a declaration of conformity and place the conformity marking on the measuring instrument in accordance with the requirements set out in Article 32 of the Regulation of the Minister of Economy

²⁴ Ibid., p. 409.

²⁵ The conformity assessment procedure modules for the particular types of measuring instruments are specified in the Article 25 of the Order of Minister for Economy of 18 December 2006 on the essential requirements for measuring instruments and its annexes.

²⁶ Markiewicz K., Habich D., Popiołek W., Michniewicz E., Litwiniuk T., Ramotowski Z., Borzymiński J., Fotowicz P., Goszczyńska A. *Polska administracja miar. Vademecum [Polish Administration of Measures]*, Warsaw 2015.

on the essential requirements for measuring instruments of 18 December 2006. The instrument which complies with the essential requirements is to bear the name or mark of the manufacturer, the CE mark followed by the supplementary metrological marking and the number of the notified body, if the conformity assessment procedures provide such requirement. The instrument must also have an accuracy marking, indicating in particular the accuracy class, if the essential requirements stipulate so. In certain cases defined in the above-cited regulation, the manufacturer may also use other information on the measuring instrument, such as: instructions for using the measuring instrument; measurement capacity data; measurement range and its marking; number of the EC-type examination certificate or the EC design examination certificate; information on the compliance of the additional instruments providing metrological data with the essential requirements.

Regardless of the assessment of conformity with the NAWI or MID directives, the measuring instrument may require an assessment of compliance with other directives. In view of the above, the CE conformity mark and number of the notified body may be located on the measuring instrument also if the instrument has not been assessed in respect of the compliance with the NAWI or MID directives. The marking indicating that the compliance of the measuring instrument with the directive has been assessed positively is an additional metrology marking in the form of the “M” letter and the last two digits of the year. In the declaration of conformity, the manufacturer is obliged to specify which directives the instrument complies with. The declaration should therefore include the information on the NAWI or MID directives if such conformity assessment was performed²⁷.

An important requirement for the manufacturer of measuring instruments is to store the products documentation and the results of the conformity assessment including the essential requirements for a period of 10 years from the date the last instrument described in the documentation was manufactured²⁸.

²⁷ www.gum.gov.pl, download date 1 August 2015.

²⁸ Article 13a of the Act of Parliament on System of Conformity Assessment.

LEGAL SITUATION OF ENTREPRENEURS AS USERS OF MEASURING INSTRUMENTS

The entrepreneur who employs measuring instruments in the trading is obliged to use instruments which have important evidence of legal metrological control. Entrepreneurs should take into consideration that decisions taken in the process of legal metrological control, verification documents and assessment of compliance with the requirements are only valid for the time period laid down in the regulations. This is due to the wear and tear factor of the measuring instruments or their components and the necessity to verify their operational accuracy.

Decision on the approval of the measuring instrument type is valid for ten (10) years. At the request of the manufacturer or his authorised representative, this period may be extended for successive periods of ten (10) years. Decision on restricted type-approval may be granted for a maximum of two (2) years and may be extended for a period of not more than three (3) years. Initial and re-verification of a measuring instrument are valid for periods of time depending on the instrument type and are specified in the executive legislation²⁹. If the measuring instrument is only subject to type-approval and initial verification or unit verification, the verification is valid for an indefinite period of time.

The conformity assessment of the measuring instrument is also limited in time. Its period of validity depends on the type of instrument and is regulated by specific provisions.

Ten-year time limit for type approval does not apply to the decisions issued before 7 January 2007 for the type approval of measuring instruments subject to conformity assessment since 7 January 2007. The decisions issued on the basis of the Law of Measures before 7 January 2007 are not extended, but will be terminated by 7 January 2017. All measuring

²⁹ Vide. Annex no. 6 to Regulation of the Minister for Economic Affairs of 7 January 2008 on the legal metrological control measuring instruments, Journal of Laws 2008, No. 5, item 29, as amended by the Order of the Minister of Economy amending the regulation on the legal metrological control measuring instruments of 2 June 2010, Journal of Laws No 110, item 728.

instruments subject to the MID directive will be subject to the conformity assessment from 7 January 2017. The ongoing transition period is due to the harmonisation of the Polish metrology law with EU law. For entrepreneurs, this is a significant handicap. The discrepancy results in different responsibilities for the users of the same types of measuring instruments. A user of the same type of measuring instrument employing it in the areas referred to in the Article 8 (1) of the Law on Measures may be required to submit the instrument for re-verification, whereas at the same time such user may be released from such an obligation in the case of another instrument of the same type, depending on the mode the instrument was placed on the market or put to use. This is not socially acceptable. The desired direction of change in social relations is to make the verification of the measuring instrument dependent only on its type, and not on the mode of the instrument is placed on the market or put to use³⁰.

Re-verification applies to the following types of instruments: tanks for liquid measurement with the exception of tanks for liquid measurement placed in a fixed position on stations liquid fuels, used exclusively for the storage of liquid; instruments for measuring the vehicle speed on the road; vehicle weighing equipment for weighing vehicles in motion; road measuring tankers; tire pressure measuring instruments for motor vehicles; grain densitometers³¹. The list of measuring instruments subject to re-verification which is the most extensive includes the instruments which have been placed on the market upon the assessment of conformity with the essential requirements on the basis of the Act on the conformity assessment system of 30 August 2002. These are: water meters, gas meters, gas meter reading converters, electricity meters, heat meters, active transducers, temperature sensor pairs for heat meters, heat meter reading converters, measuring systems for continuous and dynamic measurement of quantities of liquids

³⁰ Vide Justification of the draft of Order of the Minister of Economy on types of measuring instruments subject to legal metrological control and the scope of this inspection of 14 July 2015.

³¹ Article 1 of the Order of the Minister of Economy on types of measuring instruments subject to legal metrological control and the scope of this inspection of 27 December 2007.

other than water³², automatic weighing instruments for single loads, automatic gravimetric filling instruments, automatic discontinuous totalisers, continuous totalisers, automatic rail weighbridges, taximeters, material measures of length – jigs, vessel capacity serving measures, instruments for measuring length, instruments for measuring area, instruments for measuring multiple dimensions, exhaust gas analysers³³.

The re-verification procedures are performed by the measurement administration. The user or the contractor performing repair works on the instrument, as well as the body responsible for the measuring instrument may file a motion for re-verification. As stipulated in the Article 8k (2) of the Law on Measures, the following situations constitute an obligation to submit the instrument for re-verification:

- 1) Before the expiry of the period of validity of the initial verification, unit verification or the previous re-verification
- 2) Before the date of the conformity assessment referred to in the provisions
- 3) After the installation of the instrument on the site where it is used, before the expiry of the period of validity of the initial verification, if the assessment of conformity with the requirements is carried out before or after the installation on that site
- 4) In the event the site of installation or use where the conformity assessment or verification was performed has changed
- 5) In the event of damage or destruction of verification or security features made during verification or conformity assessment
- 6) Upon repairing the instrument.

During the re-verification, evaluation of a measuring instrument used in trading regards the conformity of metrological characteristics with the requirements and an inspection of the instrument in order to determine whether the measuring instrument has not been damaged and that the required designations and markings have been placed. Evaluation of a measuring instrument placed on the market following a conformity

³² For a detailed list of different types of measuring systems for continuous and dynamic measurement of quantities of liquids other than water vide Article 6 (5) of the Order of the Minister of Economy of 27 December 2007.

³³ Article 6 of the Order of the Minister of Economy of 27 December 2007.

assessment regards the conformity with the requirements in force during the year in which the compliance was assessed.

An examination with a positive result is certified with a proof of verification and possible security features placed on the elements of the measuring instrument, protecting them against unauthorised access.

SUMMARY

A reasonable conclusion of these considerations would be to state that entrepreneurs – both as producers and users of measuring instruments – are subject to control by multiple eligible organs of the public administration in respect of compliance with the obligations set out above. The control over the entrepreneurs' business activity in respect of the fulfilment of the obligations stipulated in the Law on Measures is exercised by the measurement administration, and namely by reviewing the observance of relevant legal provisions. The control system of products subject to conformity assessment, including measuring instruments, consists of specialist bodies defined in the Article 38 (1) of the Act of Parliament on System of Conformity Assessment, whereas Article 38 (2) lists the authorities competent for the conduct of proceedings in respect of measuring instruments placed on the market or put into use which are incompatible with the essential, detailed or other requirements.

From a business perspective of the producers and the users of measuring instruments, replacing the "old approach" legal metrological control procedures of measuring instruments with the principles of the System of Conformity Assessment is completely legitimate, as it increases the freedom of establishment. It also contributes to an increase in the free circulation of products on the EU Internal Market. However, a new economic safety issue emerges, and namely the one concerning accuracy of measurements provided with measuring instruments in different economy areas. The evidence shows that in economic trading, the system of conformity assessment and a substantial freedom to choose from the procedures may lead to a situation where the entrepreneurs avoid the obligation to re-verify the measuring instruments as the conformity assessment expires. It is of

utmost importance for the economic well-being of the state, its fiscal interest and consumer protection to ensure that the competent administration authorities periodically review measuring instruments used in business trading. As to the uniformity of measures and instrument verification in the Republic of Poland, it should remain in the capacity of the measurement administration.

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