

Definition of the term “manufacturer”

In 2012 the definition of the term “manufacturer” was discussed, among others, within WELMEC.

However, it seems that such topic needed some clarifications. For that reason, some members of the European Parliament raised two questions to the Commission, one on 26 June and the second one on 3 July 2012, concerning the definition of the term “manufacturer”.

The questions addressed by the EP members and the joint answer given by Mr Tajani - Commissioner of DG Industry-, on behalf of the Commission, which content have been got from the European Parliament website¹, are the following:

Question 1²:

Parliamentary questions

26 June 2012 E-006300/2012

Question for written answer to the Commission
Rule 117
James Nicholson (ECR)

▶ **Subject: The definition of ‘manufacturer’ for the purposes of Directive 2009/23/EC**

Can the Commission clarify whether it agrees with the thrust of the current discussions within WELMEC (European Cooperation in Legal Metrology) concerning the definition of ‘manufacturer’?

These definitions focus on whether the economic operator placing a non-automatic weighing instrument on the market must concurrently be the operator who obtains the EC type-approval certificate.

The present view of WELMEC is that the type-approval holder does have to be the person placing the instrument on the market.

As it is not an explicit requirement, the limitation on the scope of manufacturer to the type-approval holder would impinge on the development of novel compliance solutions and prevent the development of different business models. Such a definition would undoubtedly have a disproportionate affect on SMEs — especially considering that each EC type-approval certificate costs approximately EUR 640.

Question 2³:

Parliamentary questions

3 July 2012 E-006652/2012

Question for written answer to the Commission
Rule 117
Sir Graham Watson (ALDE)

▶ **Subject: Metrology**

Measuring instruments are essential to ensure accuracy of measurement, notably for transactions by consumers and industry in everyday life. The main EU legislation on measuring instruments are Directives 2004/22/EC and 2009/23/EC.

Before weighing instruments can be used for commercial practice they must be subject to two separate procedures, first laboratory testing to obtain a type approval certificate, and secondly a verification check to ensure compliance

¹ <http://www.europarl.europa.eu/>

² <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-006300&language=EN>

³ <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-006652&language=EN>

with the type approval before the product is marketed.

Some Member States have operated the system such that the business placing the measuring instrument on the market does not need to be the same business which gained the type approval document. This has allowed many SMEs to base their business models on using type approval documents for the relevant component within the subsequently manufactured measuring instrument.

WELMEC has recently submitted that the term 'manufacturer', as set out in the directives, should only be interpreted as meaning the business placing the instrument on the market if it is the same as the one undertaking the type approval process. This would lead to additional expense for industry and only create a need for parallel approvals, where identical type approvals are obtained on products with no real benefit to consumers.

What is the Commission's view on how the term manufacturer is defined within EU metrology?

Joint answer to Question 1 and Question 2⁴:

Parliamentary questions

14 August 2012

E-006300/12

E-006652/12

Joint answer given by Mr Tajani on behalf of the Commission

Written questions : E-006300/12 , E-006652/12

In the context of the New Approach, of which Directive 2009/23/EC is part, 'manufacturer' means the person who manufactures an instrument or has an instrument designed or manufactured, and markets that instrument under his name or trademark. The definition implies that the manufacturer is fully responsible for the whole process from design through to placing on the market and putting into use of the instrument.

With this in mind the WELMEC⁽¹⁾ guidance would seem too drastic an approach. A manufacturer is at all times responsible for the instruments he places on the market under his name. Given this clear responsibility there is no need to change current practices and force anyone into revising the name on their type examination certificates. The Commission is further looking into this matter and will inform stakeholders of the outcome.

⁽¹⁾ European cooperation in legal metrology