Directive 2009/23/EC of the European Parliament and of the Council of 23 April 2009 on non-automatic weighing instruments (Codified version) (Text with EEA relevance) (repealed)

CHAPTER 1

SCOPE, PLACING ON THE MARKET AND FREE MOVEMENT

Article 1

1 This Directive shall apply to all non-automatic weighing instruments.

2 For the purposes of this Directive, the following categories of use of non-automatic weighing instruments shall be distinguished:

a (i) determination of mass for commercial transactions;

(ii) determination of mass for the calculation of a toll, tariff, tax, bonus, penalty, remuneration, indemnity or similar type of payment;

(iii) determination of mass for the application of laws or regulations or for an expert opinion given in court proceedings;

(iv) determination of mass in the practice of medicine for weighing patients for the purposes of monitoring, diagnosis and medical treatment;

(v) determination of mass for making up medicines on prescription in a pharmacy and determination of mass in analyses carried out in medical and pharmaceutical laboratories;

(vi) determination of price on the basis of mass for the purposes of direct sales to the public and the making-up of prepackages;

b all applications other than those listed in point (a).

Article 2

For the purposes of this Directive, the following definitions shall apply:

1. ‘weighing instrument’	:	a measuring instrument serving to determine the mass of a body by using the action of gravity on that body. A weighing instrument may also serve to determine other mass-related magnitudes, quantities, parameters or characteristics;
2. ‘non-automatic weighing instrument’ or ‘instrument’	:	a weighing instrument requiring the intervention of an operator during weighing;
3. ‘harmonised standard’	:	a technical specification (European standard or harmonised document) adopted by the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (Cenelec), or the European Telecommunications Standards Institute (ETSI), or by two or three of those bodies, upon a remit from the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations[(1)] and the general guidelines for cooperation between the Commission, the

European Free Trade Association (EFTA) and those three bodies, signed on 28 March 2003.

Article 3

1 Member States shall take all steps to ensure that only instruments that meet the requirements of this Directive may be placed on the market.

2 Member States shall take all steps to ensure that instruments may not be brought into service for the uses referred to in point (a) of Article 1(2) unless they meet the requirements of this Directive and accordingly bear the 'CE' conformity marking provided for in Article 11.

Article 4

Instruments used for the applications listed in point (a) of Article 1(2) must satisfy the essential requirements set out in Annex I.

In cases where the instrument includes, or is connected to, devices which are not used for the applications listed in point (a) of Article 1(2), such devices shall not be subject to those essential requirements.

Article 5

1 Member States shall not impede the placing on the market of instruments which meet the requirements of this Directive.

2 Member States shall not impede the putting into service, for the uses referred to in point (a) of Article 1(2), of instruments which meet the requirements of this Directive.

Article 6

1 Member States shall presume conformity with the essential requirements set out in Annex I in respect of instruments which comply with the relevant national standards implementing the harmonised standards that meet those requirements.

2 The Commission shall publish the references of the harmonised standards referred to in paragraph 1 in the *Official Journal of the European Union*.

Member States shall publish the references of the national standards referred to in paragraph 1.

Article 7

Where a Member State or the Commission considers that the harmonised standards referred to in Article 6(1) do not fully meet the essential requirements set out in Annex I, the Commission or the Member State concerned shall bring the matter before the Standing Committee set up under Article 5 of Directive 98/34/EC, hereinafter referred to as 'the Committee', giving its reasons for doing so.

The Committee shall deliver an opinion without delay.

In the light of the Committee's opinion, the Commission shall inform the Member States whether or not it is necessary to withdraw those standards from the publications referred to in Article 6(2).

Article 8

1 Where a Member State considers that instruments bearing the 'CE' conformity marking referred to in Annex II, points 2, 3 and 4, do not meet the requirements of this Directive

when properly installed and used for the purposes for which they are intended, it shall take all appropriate measures to withdraw those instruments from the market or to prohibit or restrict their being put into service and/or placed on the market.

The Member State concerned shall immediately inform the Commission of any such measure, indicating the reasons for its decision, and in particular whether non-compliance is due to:

a failure to meet the essential requirements set out in Annex I, where instruments do not meet the harmonised standards referred to in Article 6(1);

b incorrect application of the harmonised standards referred to in Article 6(1);

c shortcomings in the harmonised standards referred to in Article 6(1) themselves.

2 The Commission shall enter into consultation with the parties concerned as soon as possible.

After such consultation the Commission shall immediately inform the Member State which took the action of the result. Should it find that the measure is justified it shall immediately inform the other Member States.

If the decision is attributed to shortcomings in the standards, the Commission, after consulting the parties concerned, shall bring the matter before the Committee within two months if the Member State which has taken the measures intends to maintain them, and shall subsequently initiate the procedures referred to in Article 7.

3 Where an instrument which does not comply bears the ‘CE’ conformity marking, the competent Member State shall take appropriate action against whomsoever has affixed the marking and shall inform the Commission and the other Member States thereof.

4 The Commission shall ensure that the Member States are kept informed of the progress and outcome of this procedure.

(**1**) OJ L 204, 21.7.1998, p. 37.