

On 10 January 2018, the European Commission published important notice warning of the consequences that Brexit will have in the field of industrial products¹, which are subject to CE Marking requirements when placed on the European Union (EU) market.

For those products, the European Commission confirmed that to demonstrate compliance with CE Marking requirements for products placed on the EU market² as from Brexit day on March 19, 2019, “*economic operators are advised to take the necessary steps to ensure that, where the applicable conformity assessment procedures require the intervention of a Notified Body, they will hold certificates issued by an EU-27 Notified Body*”.

In practice, this means that, absent any other arrangement, as from Brexit Day, companies that wish to continue placing products on the EU market and that previously relied on conformity assessments carried out by a UK Notified Body, will no longer be able to rely on those.

Current CE Marking Legal Framework

At the moment, once a product is placed on the EU market, it can move freely within the EU, without the need for additional registration or border checks.

To benefit from this freedom of movement, some products have to respect specific standard and requirements relating to scientific, safety, health, environmental impact and consumer protection. To ensure that products comply with those standard and requirements, they must go through a conformity assessment procedure, either carried out by the producers themselves or by EU Notified Bodies. This compliance procedure is evidenced by affixing CE Marking to the products.

Once out of the EU, and absent any other arrangement, UK Notified Bodies will lose their status as EU Notified Bodies and will, therefore, no longer be able to carry out conformity assessment procedure under EU product legislation post-Brexit.

Companies will have to apply for a new certificate from an EU Notified Body or arrange for a transfer – on the basis of a contractual arrangement between the manufacturer, the UK Notified Body and the EU-27 Notified Body – of the file and the corresponding certificate from the UK Notified Body to an EU-27 Notified Body, which would then take over the responsibility for that certificate.

What Products Are Covered by CE Marking Requirements?

By way of reminder, a wide range of products is covered by CE Marking laws:

- Electrical and electronic equipment
- Batteries and waste batteries
- Appliances burning gaseous fuels
- Eco-design requirements for energy-related products
- Simple pressure vessels
- Toys
- Machinery
- Measuring instruments
- Non-automatic weighing instruments
- Cableway installations designed to carry persons
- Radio equipment
- Medical devices and active implantable medical devices
- In vitro diagnostic medical devices
- Cosmetics
- Pressure equipment
- Aerosol dispensers
- Lifts and safety components for lifts
- Recreational craft and personal watercraft
- Equipment and protective systems intended for use in potentially explosive atmospheres
- Explosives for civil uses
- Construction products
- Pyrotechnics
- Regulation on the labelling of tyres
- Personal protective equipment
- Marine equipment
- Noise emission in the environment by equipment for use outdoors
- Energy labelling
- Textile products
- Metrology
- Pre-packaged products
- Hot-water boilers fired with liquid or gaseous fuels
- Rail system
- Electronic road toll systems
- Tachographs in road transport

What Are the Penalties for Violation of CE Marking Laws?

In the EU market, national laws provide for specific penalties when companies do not fulfil their obligation to conduct conformity assessments or are not able to present the documents attesting of these conformity assessments. Under English law, for instance, failure to comply with those requirements constitutes an offence, which will generally be sanctioned by fines but can also include prison sentences. Under German law, penalties may be up to €100,000/per product in the case of intent and up to €50,000 in the case of negligence.

¹ Notice to Stakeholders, Withdrawal of the United Kingdom and EU Rules in the Field of Industrial Products, 10 January 2018.

² The Union Market covers markets of the 27 Member States of the European Union.

Consequences of Brexit on CE Marking

UK Certification No Longer Valid After Brexit to Access EU Market

This means that, as from Brexit Day and in the absence of any transitional agreement, companies that wish to continue placing products on the EU market and that previously relied on conformity assessments carried out by a UK Notified Body will no longer be able to rely on those. The Commission stated that “*where economic operators hold certificates issued by a UK Notified Body prior to the withdrawal date and plan to continue placing the product concerned on the EU-27 market as from the withdrawal date, they are advised to consider either **apply for a new certificate issued by an EU-27 Notified Body or organising a transfer (...) of the file from the UK Notified Body to an EU Notified Body***”.

This also means that, post-Brexit, when placing a product on the EU market, companies will not be able to go through UK Notified Bodies when a conformity assessment by a Notified Body is required, but will rather have to request EU Notified Bodies to carry out these conformity assessments.

UK Operators May Expect Changes in Status and Obligations

Another consequence will be that the “manufacturers”, “importers” and “authorised representatives” currently operating from the UK will no longer be considered to be established in EU after the UK withdrawal. Consequently, some operators might see their designation change under CE Marking legislation, as well as their relevant obligations. For instance, EU distributors established in the UK will become importers under CE Marking legislation in relation to products that they will place on the EU market as from the UK withdrawal date. This could also be problematic for authorised representatives who have to be established in the EU. Economic operators should, therefore, in addition to the above, make sure that they are aware of all obligations they have to comply with post-Brexit.

What Should You Do?

To anticipate these changes and ensure full access of your products to the EU market, it is recommended that you start assessing and/or reviewing your CE Marking conformity assessment procedures and, where they require or provide for the intervention of a Notified Body, initiate EU Notified Body assessment procedures or negotiate the transfer of your file from a UK Notified Body to an EU Notified Body.

How Can We Help?

Our UK International Trade team has the ability to provide advice on all aspects of EU trade laws, including CE Marking requirements in the EU and its member states. With respect to Brexit specifically, we advise on all trade implications of Brexit for your business. If you have any questions relating to the trade implications of Brexit on your business, please contact Aline Doussin.

Contact

Aline Doussin

Partner, London

T +44 20 7655 1146

E aline.doussin@squirepb.com