

Brexit: a snapshot – *key changes to product compliance requirements*

March 2021

On 31 January 2020 at 11pm (UK time), the UK formally left the EU after over 40 years of membership and on 31 December 2020 the temporary transitional period came to an end. The UK's relationship with the EU is now no longer governed by EU treaties, but instead by the terms of the EU-UK Trade and Cooperation Agreement, which was agreed on 24 December 2020 and which contains new rules governing how the UK and EU will trade together from 1 January 2021.

Furthermore, the European Union (Withdrawal) Act 2018¹ came into effect on 31 January 2020 at 11pm (UK time) and retains EU-derived legislation, including product safety laws, in domestic UK law. The Product Safety and Metrology Regulations² amend the retained EU product-related law to address deficiencies arising from the UK's withdrawal from the EU and provide for some specific provisions applicable in the Great Britain and Northern Ireland market from 1 January 2021.

What does this mean for companies launching their products on both the EU and UK markets after 1 January 2021? In short, their goods must now comply with **both** UK and EU regimes and adhere to the respective labelling and certification obligations to retain access to both markets.

In addition, the mechanism for moving goods between the UK and EU has changed following Brexit and this has an impact on the status of economic operators within the supply chain. Some businesses that previously had a UK-based “distributor” may find this distributor now becoming an importer into the UK following Brexit, and so should make sure that this entity meets the relevant obligations.

We provide a snapshot of some of the key product compliance changes below.

UKCA mark

From 1 January 2021 a new mark - the UKCA (UK Conformity Assessed) mark - must be provided on products placed on the market in Great Britain i.e. England, Scotland and Wales. To allow

¹ As amended by the European Union (Withdrawal Agreement) Act 2020

² The Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 (as amended)

businesses time to adjust, the CE mark will continue to be accepted in the UK until 1 January 2022 for certain products. The UKCA mark will, however, not be recognised in the EU.

When considering the UK as a market, Northern Ireland acquires a dual status and for the purpose of product compliance is considered part of both the UK and EU markets. Therefore products placed on the market in Northern Ireland can still follow EU rules and continue to apply the CE mark unless they were manufactured specifically to new UK rules or a mandatory third-party conformity assessment was carried out by a UK notified body, in which case a new Northern Ireland specific UK (NI) mark must apply.

UK importer's details

From 1 January 2021, in addition to manufacturer's details, UK importer details must be provided on goods placed on the UK market. Until 31 December 2022, the UK importer details can be provided "on the accompanying documentation" rather than on the product itself. Accompanying documentation may take the form of any document that stays with the product until it reaches its end user and there are a number of possible solutions according to guidance issued by the UK Office for Product Safety & Standards e.g. providing the importer details on a shipping document, on an invoice, or on a label on the outer packaging in which the goods are packed.

Conformity assessment

For goods placed on the EU market after 1 January 2021, any mandatory third-party conformity assessment will need to be carried out by an EU-recognised conformity assessment body and it will no longer be possible for UK conformity assessment bodies to carry out such conformity assessments for products placed on the EU market.

For goods placed on the market in Great Britain, any mandatory third-party conformity assessment will need to be carried out by a UK-recognised approved body =.

How to prepare?

Manufacturers should anticipate regulatory changes in the products sector. Companies should keep an eye on any amended UK regulations applicable to specific product categories and consider whether changes need to be made to the supply chain or product SKU codes in order to simplify logistics and keep costs down.

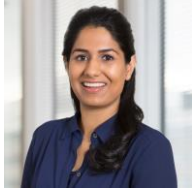
Significance for other markets

The effects of Brexit also have more far-reaching consequences, for example in the Italian and German markets. Although Brexit isn't "new" per se, and companies in both Italy and Germany have been starting to prepare for the UK's departure from the EU over the last couple of years, it is only now that the EU and UK have concluded their negotiations with a trade agreement that daily business between the EU and UK has fundamentally changed. Customs declarations for goods, health checks for agricultural products and other formalities make business more challenging in particular for importers and traders of goods that are now imported into Europe from the UK as a third country.

There are also new challenges for companies that wish to retain access to the UK market. For example, from an Italian perspective, the UK market represents a large share of the Italian exports of agri-food products. As a result of Brexit, Italian companies that previously enjoyed a high level of protection in the UK for their protected designation of origin (PDO) and protected geographical indication (PGI) products may no longer benefit from such protection, and may face increased competition. It will therefore be necessary for Italian companies to conclude new agreements in order to ensure their products are well protected from competition on the UK market.

For further information and resources on Brexit, please contact our authors or visit the Hogan Lovells Brexit Hub: <https://www.hoganlovellsbrexit.com/>

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