



Product compliance after Brexit

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In this whitepaper we address the consequences of Brexit for product compliance markings for products travelling from the UK to the European Economic Area (EEA) and vice versa.

Introduction to CE legislation

Many products may only be traded in the EEA if they comply with European CE legislation, which sets out certain safety, health and environmental requirements. Products which meet the CE requirements may be traded in the EEA and must be provided with CE marking. Products that do not comply with the CE legislation are not allowed to be traded in the EEA.

The European CE legislation is established in 27 different and product specific directives and regulations. The product groups for which CE marking is required include machinery, elevators, gas appliances, pressure equipment, personal protective equipment, medical devices, construction products, electrical and electronic equipment, recreational craft, explosives, pyrotechnic articles and toys.

It needs to be noted that sometimes products are covered by several different directives that require CE marking. It is therefore important to check all CE legislation and see if it applies on a certain product. A product on which several different CE directives are applicable needs to comply with all those directives.



Different responsibilities for manufacturer, importer and distributor

In certain directives there is a distinction made between the manufacturer, importer and distributor regarding the CE requirements they have to comply with. In general, the manufacturer has to declare that its product complies with all essential requirements of the applicable CE legislation. Therefore a manufacturer must carry out a conformity assessment, compile a technical file, draw up a declaration of conformity, provide instructions for use where necessary and affix the CE marking to the product. The name and address of the manufacturer must also be stated on the product. In many cases, the directives require the manufacturer to have its product tested by a “notified body”, an independent, government-registered testing agency.

When importing a product from outside the EEA, the importer must verify that the manufacturer has taken all necessary steps for compliance with the CE legislation. In addition to the name and address of the manufacturer, the name and address of the importer must also be stated on the product.

When an importer or distributor handles a product under its own name or its own trademark it thereby takes over the manufacturer’s responsibilities according to some CE directives. In that case the importer or distributor will be considered a manufacturer in view of the CE legislation.

Following Brexit the United Kingdom is now a non-EEA country. This may have consequences for a distributor in an EEA country which now may have different responsibilities as an importer under the applicable CE legislation.

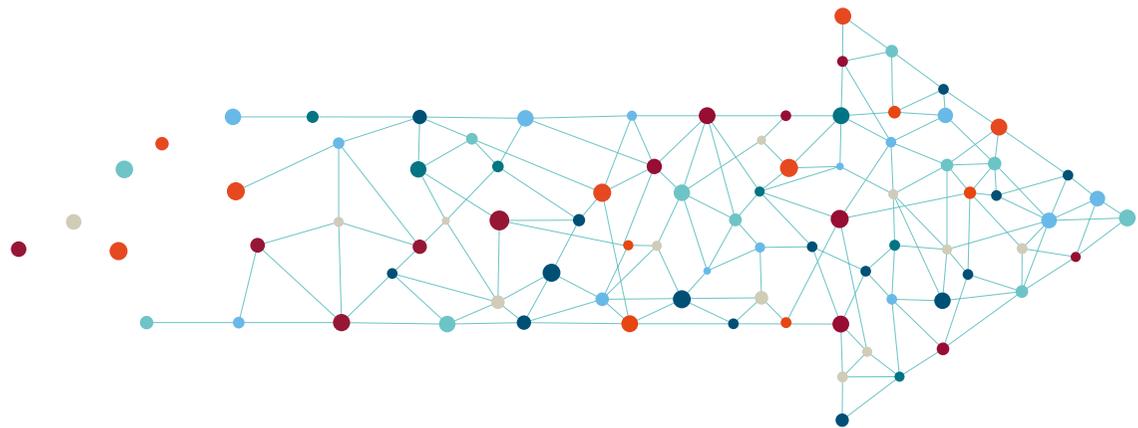
CE certification process

The CE legislation describes in each applicable directive the process for CE certification. Mainly there are two different types of certification: 1) certification by a notified body and 2) self-certification.

Some CE directives explicitly state that CE compliance must be established by a notified body. These notified bodies are appointed per country by the European Commission. If a notified body in any of the EEA countries concludes that the CE requirements for a certain product are met then this applies in all EEA countries.

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Another way of certification is self-certification. When a certain CE directive does not require a certification process by a notified body, self-certification may be needed. The directive describes the product requirements and the manufacturer has to self-test if those requirements for a certain product are met. It is possible for the manufacturer to outsource this testing to a third party however the manufacturer will be solely responsible for validity of the test and compliance with the CE legislation.



Brexit - from UK to EEA

All products from manufacturers from the UK that are released on the EEA market will have to comply with all CE legislation. As mentioned above some products require CE approvals issued by a notified body. As a result of Brexit all notified bodies in the UK lost their status on December 31, 2020. This means that products from UK manufacturers who received their CE certification by a UK body will no longer be valid. From January 1, 2021 manufacturers who release products on the market of the EEA require the use of an EU notified body to comply with the CE legislation.



Brexit - from EEA to UK

Now that the UK has left the EEA, the UK is in the process of phasing out the use of the CE mark and has introduced its own replacement "UKCA" mark.

Until 31 December 2021, UK importers and manufacturers can continue to place most CE-marked products on the UK market¹. This is designed to give businesses time to adjust to the new UK rules.

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The UKCA mark will become mandatory, and the CE mark will no longer be recognised, for all products caught by the relevant legislation and placed on the Great Britain (GB) market after 1 January 2022. However, there remains a further one-year transitional period during which importers and manufacturers can comply with the UKCA mark requirement in most cases by including a label affixed to the item (or a document accompanying the product) without needing to permanently affix the UKCA mark on the actual item or equipment itself. This is designed to give manufacturers and importers the ability to "retrofit" products that have already been manufactured with the CE mark (thereby avoiding unnecessary stock write-off) by adding a label or document to the product.

From 1 January 2023 the full rules take effect, which means that the UKCA mark will need to be affixed on the relevant item itself in GB (England, Scotland and Wales) where the relevant legislation applies.

Nevertheless, in order to avoid supply chain confusion, EEA brands exporting into GB are advised to transition towards full compliance with the UKCA mark requirements as soon as possible. In the UK it is acceptable to display both the CE mark and the UKCA mark, provided of course that the product complies with both regimes.

It is also important to note that under the terms of the UK's withdrawal from the EU, most product-specific EU legislation continues to have effect in Northern Ireland and the CE mark will continue to be required in the same way in most cases. Those importing into the UK therefore need to be aware that there are different rules for Northern Ireland and Great Britain (i.e. England, Scotland and Wales).

For more information in relation to the rules for placing goods on the Northern Irish market, please see the relevant **UK government guidance**.

¹ Please note there are some exceptions to this – see **UK government guidance** for more details.

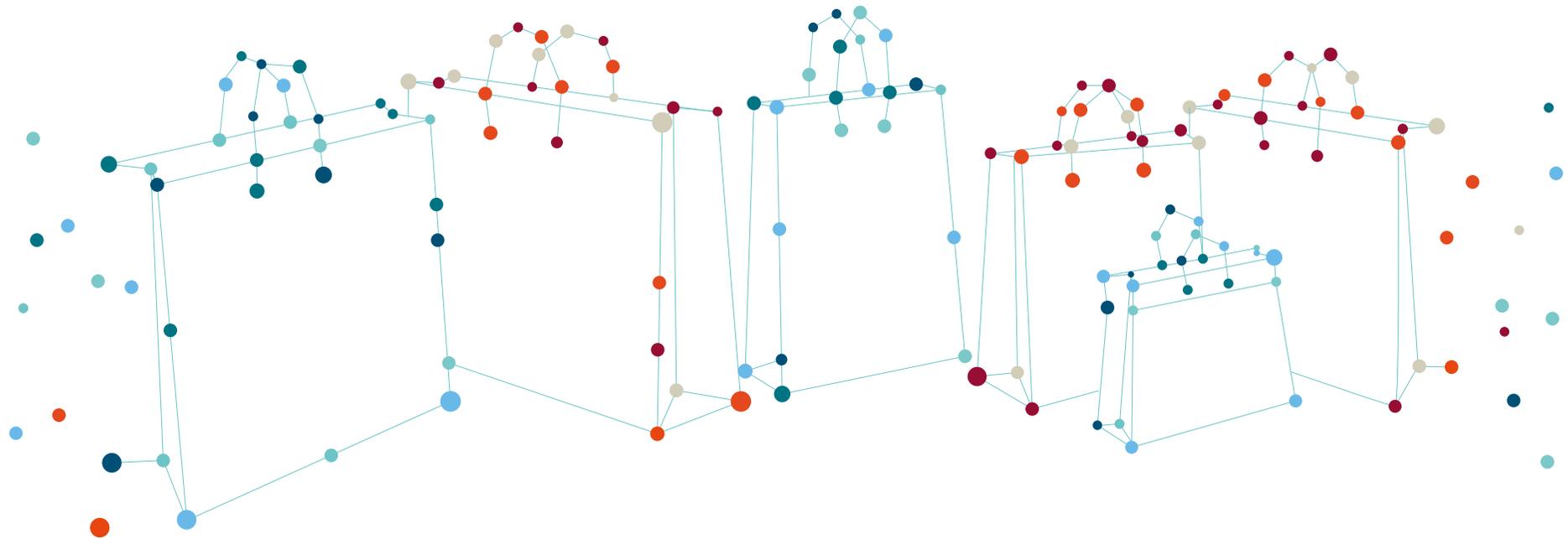
Summary

CE legislation applies on a broad range of products, all with their specific legislation and subsequent requirements. Different CE-directives can be applicable on one product and there are different kinds CE certification processes.

As a result of Brexit, responsibilities of manufacturer, importer and distributor may shift, and compliance for importing and exporting between the EEA and the UK may change. For example, a UK-based distributor who is supplied by a manufacturer based in the EEA may have found that, since 1 January 2021, the UK distributor has become an “importer” under UK law, meaning that they are responsible for the technical conformity and labelling of the product. The same situation can occur in reverse within the EEA.

Any business involved in the supply chain for the distribution of consumer goods between the UK and EEA would be advised to consider where responsibility lies and ensure that products are appropriately labelled with CE and/or UKCA marks.

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