



## FOCUS ARTICLE

# ATEX, DSEAR & Brexit

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With the official Brexit date less than a year away (30 March 2019 - 00:00 h Central European Time), folks in the process and process safety industry are probably thinking and asking the following questions:

1. What's going to happen to DSEAR (Dangerous Substances and Explosive Atmospheres Regulations) when we leave the EU?
2. Once we leave, can operators still legally use EU ATEX certified equipment in the UK i.e. would EPS (The Equipment and Protective Systems Intended for use in Potentially Explosive Atmospheres Regulations) recognise EU certified equipment? Would we recognise EU Notified Bodies?
3. Will UK Notified Bodies still be recognised in EU?
4. Do UK equipment manufacturers have to find an EU Notified Body to sell their equipment in EU?

In my opinion and understanding of the situation, the short answers to these questions are as follows respectively:

1. Probably not much in the short-term.
2. Probably yes. Maybe it will depend on whether it was purchased before or after Brexit date although I doubt that.
3. No.
4. Yes.

As a Brit working and living in the UK who advises on process safety, I am sometimes asked these questions by my clients. I think people want to be safe, but they also want to be clear on the standard on which they judge themselves and are judged by.

As of date, the only official information we have is the short statement published by the European Commission on 22 January 2018 and it is entitled "Withdrawal of the United Kingdom and EU Rules in the Fields of Industrial Products" [1]. Some useful highlights I picked up on were:

- > "As from the withdrawal date, a manufacturer or importer established in the United Kingdom will no longer be considered as an economic operator established in the Union.
- > ... UK Notified Bodies will lose their status as EU Notified Bodies and will be removed from the Commission's information system on notified organisations (NANDO database). As such, UK bodies will not be in a position to perform conformity assessment tasks pursuant to Union product legislation as from the withdrawal date.
- > 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 applying for a new certificate issued by an EU-27 Notified Body or arranging 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. This responsibility depends on the specific conformity assessment procedure required for the product concerned under the applicable product legislation set out in Annex.

- > NB: all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date'). The United Kingdom will then become a 'third country' (third country is a country not member of the EU)."

What these items mean are:

- > A UK manufacturer producing equipment for usage in explosive atmospheres will no longer be automatically recognised internationally for the quality mark of their products. Being an authorised economic operator (i.e. as UK is currently) indicates the UK's role in the international supply chain is secure, and that customs controls and procedures are efficient and compliant. So we may lose this privilege although I suspect the final negotiation agreements may mean otherwise.
- > UK Notified Bodies won't be allowed to certify ATEX equipment for their EU customers. There are currently 9 such UK companies that will be affected [2].
- > If you are a UK manufacture of equipment, you will need to get an EU Notified Body to certify your equipment before you can sell them to your EU customers.
- > ATEX directives will no longer be enforceable in the UK once we leave the EU.

So I guess that answers questions 3 and 4 asked at the beginning. Will the UK legislators and enforcer (HSE - Health and Safety Executives) reciprocate? Will we demand that EU ATEX products need to be certified in a UK Notified Body before usage? Will it depend on whether it was before Brexit or after? We have yet to hear something official but my gut-feeling is that if it puts a huge annoying burden on UK businesses, the UK may not reciprocate. What about DSEAR – which is all about ensuring employees and site personnel are safe from fires and explosions? Again, there is nothing official and I think the HSE probably believes DSEAR is a good piece of law, so do I as a safety advisor, and so will likely continue with it although it is heavily influenced by the ATEX Directive. At the time of leaving the EU, we will be aligned with the ATEX Directive, but there would of course be the matter of updates, and this is where we could see greater divergence between future DSEAR and future ATEX directives.

### References:

1. [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=612136](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=612136)
2. <https://www.theaemt.com/technical-info/atex-iec-ex/atex-notified-bodies>

## WAHID AZIZI

Wahid Azizi is a Process Safety Specialist consulting at DEKRA Process Safety. Previously, he was a Technical Safety Leader at Procter & Gamble, London Plant; a Top Tier SEVESO site and one of P&G's largest plants globally. He has knowledge and experience in various areas of process safety; risk assessments techniques (HAZOP, LOPA), Consequence assessment, ATEX/DSEAR assessments, SEVESO/COMAH, electrostatics, mechanical integrity programme and risk based inspection (RBI).

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