

# Mrs May's trashing of the Successful Nobo Industry

Notified Bodies (Nobos), together with Designated Bodies (Debos) and Assessment Bodies (Asbos), are one of our country's least known success stories. Yet they could easily largely disappear, together with thousands of well paid jobs and millions if not billions of pounds in export earnings, if Mrs May persists in her determination to take this country out of the Single Market and European Economic Area (EEA).

A wide range of products – from equipment used in explosive atmospheres to toys – are required by EU product law to undergo third party conformity assessment and/or testing by suitable independent accredited organisations (Nobos) in order to be placed on the market in the European Union (EU) and often by extension the EEA. This is to ensure that they meet EU legal requirements, which often includes compliance with specified requirements in European Standards (ENs). This assessment, depending upon the relevant EU product legislation and ENs may require continuing surveillance (of manufacture) and testing of the product by the Nobo. Certification can also be time limited as well, requiring reassessment after a number of years. Over the years, the EU has increased the scope of its legislation, which may in part originate elsewhere in world bodies or agreements and it carries out periodic updates of existing product legislation.

In turn, the Nobos need to be resident in the EEA, Switzerland or Turkey, be accredited with relevant competence(s) and are listed on the EU's NANDO database. Each Member State also has an accreditation organisation which regularly checks the competence of Nobos to carry out assessment and testing work. The UK-based list of Nobos includes famous and respected names such as British Standards Institute (BSI), Lloyd's Register, the National Physical Laboratory and The Vehicle Certification

Agency. There are also many other less well known, smaller organisations in the private and public sectors.

Through mutual recognition, a product with a conformity certificate issued by an accredited Nobo in one Member State is accepted in all the others without further assessment or testing. Sometimes, however, a product may undergo further assessment as part of an overall system, but this is not intended to repeat previous work.

Recently the European Commission has published guidance for manufacturers and Nobos for after 29<sup>th</sup> March 2019 *Notice to stakeholders withdrawal of the United Kingdom and EU rules in the field of industrial products*. After this date Nobos registered in the United Kingdom (as a 'third country' outside the EU and EEA) will lose their EU Nobo status and be removed from the EU's database.

A manufacturer (or supplier) of a product requiring third party conformity assessment after 29<sup>th</sup> March 2019 will have to use a Nobo based in the EEA, Switzerland or Turkey in order to place a new or modified product on the EU market. When placing a new or modified product on the UK market, the manufacturer is likely to opt for an EEA- or Switzerland-based Nobo for all conformity assessment to prevent duplication of work and costs. After all, Mrs May intends that after Brexit (if it ever happens instead of EU Vassal State status) UK legislation (presumably including product legislation) will follow EU legislation.

UK-based former EU Nobos could then see much of their work disappear quickly, including any work related to putting products on the UK market. The Annex to the EU's *Notice to stakeholders withdrawal of the United Kingdom and EU rules in the field of industrial products* lists the EU product categories covered. This, however, may be just the 'tip of the iceberg' since, depending upon the EU product legislation,

components making up a particular product may also need some form of independent conformity testing and inspection. Manufacturers or suppliers may also like to use a 'one stop shop' approach developing a longer term relationship with one Nobo to cover a wide range of their independent conformity, testing and quality assessment requirements, not merely to comply with EU product legislation.

A further blow to UK based Nobos is that without the potentially larger market provided by the EU, some investment decisions, say for testing facilities, may not be justified or even feasible. In the current climate of uncertainty, prudent UK-based Nobos could already start transferring work and jobs to other EEA members in order to retain existing EU based customers. They may also consider working through an EU-based Nobo who will 'rebadge' their work and obviously charge for so doing. This would in turn undermine their unique selling proposition – competitiveness.

It is possible that this impending loss of EU accreditation by Nobos can be successfully resolved by the Department for (not) Exiting the European Union. However, at the moment, this does not look promising given that some of the inaccurate and uncompromising statements in the EU's *Notice to stakeholders withdrawal of the United Kingdom and EU rules in the field of industrial products* relating to Nobos may not be legal under EU law; Nobos are not solely within the EU.

Third party testing and certification appears to have a very promising future worldwide. It provides confidence that safety, environmental impact and energy consumption have been independently assessed. It may be essential when assessing some of the products of the future, such as autonomous or driverless cars. Sadly the UK is potentially going to face a huge handicap if Nobos cannot viably operate here through political decisions of the government.

The potential loss of UK and EU markets for UK based Nobos

would not arise if Mrs May had not made such a rash decision in ruling out any ongoing membership of the EEA after Brexit.

She could have decided instead after Brexit on 29<sup>th</sup> March 2019 to re-join the European Free Trade Association (EFTA). This provides a breathing space. enabling us to remain in the EEA (whilst outside the EU) under different conditions which, for example, allow unilateral control of immigration (see Chapter 4, Schedule 112 *The Safeguard Measures* in the EEA Agreement).

Will she have the courage after 29<sup>th</sup> March 2019 to face people from these UK-based former EU-accredited Nobos who have worked hard over the years to build expertise, facilities, reputations and long-term relationships with customers and yet face unemployment, because of her premature rejection of a useful “holding position” without any consideration of an alternative?