A view from the Coalface on Mrs May's Brexit Proposals – 6th July 2018

"Unworkable!" "But it does need knowing some background first to understand why."

Changes in EU Directives create problems at the Coalface

One of the great frustrations working with EU Directives (or laws) that apply to products is when some of their requirements change. The change can be included in another Directive, amending text in the original. The new amending Directive may also include changes to requirements in other Directives. Working out the change needs extracting text and superimposing it on the original.

Where an existing Directive is superseded by a new Directive again it may not be that easy to find the changes. Amended text is not highlighted and may now appear elsewhere, for example, combined with other requirements. So even if lucky or fastidious enough to know about a Directive having been changed it is only the beginning of understanding exactly what is involved.

There may be a delay before the change becomes operable depending upon the legal process being followed or the change may be almost immediate. 'Official' advice, if it exists at all, can be limited, unhelpful and not that easy to find; its 'official' status also needs to be understood.

Changes in EU Directives and specifications can produce more subtle confusion

EU Directives can contain directly specified technical requirements or through reference to specific requirements in dated 'European specification', often a European Standard. When the European specification changes there can be an anomalous situation until the Directive is changed to refer to the new dated version. There can also be anomalous situations where the European specification permits national specific or special cases and the original Directive does not. More confusion then can occur when the amending or new Directive does not permit a previous national case allowed in the original Directive or introduces new national cases where the original Directive was specific.

EU/EEA Law applying to the Single Market cannot just be ignored

EU Directives (the EU *Acquis*) relating to the Single Market governs how it functions. The EU's direction of travel (for the Single Market), is towards harmonised standards, regulations, and enforcement or surveillance through a top down centralised legalistic and bureaucratic framework. Generally there are no deviations except those permitted within the existing legal regulatory framework. Any change must be incorporated into EU law first.

The European Free Trade Association (EFTA) incorporates the EU Directives into their own body of law in order for them to participate in the wider European Economic Area (EEA).

The EU's New and Global Approach based Directives for Products

The EU's approach (to products) is outlined in principle in *COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT Enhancing the Implementation of the New Approach Directives* , in more detail in the EU's Guide to the implementation of directives based on the New Approach and the Global Approach and encapsulated in EU law in *REGULATION (EC) No 765/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 July 2008 setting out*

the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93. The EU has also recently spelt out its position, which is consistent with their *New Approach Directives,* in *Notice to stakeholders withdrawal of the United Kingdom and EU rules in the field of industrial products*. The adverse effect of Mrs May's Brexit on a frequently essential part of this product jigsaw (the work of Notified Bodies for conformity assessment of products) is explained here.

Mrs May proposes adding a new level of chaos to the Single Market and EEA

Regulatory alignment and mutual recognition will inevitably require considerable amendment to existing EU Directives covering a wide range of products and associated production, regulatory and conformity assessment and market surveillance. This is far from straightforward or quick given that requirements are effectively intertwined; change one here and there can be a knock-on effect elsewhere. Then there is creating new precedents that produce anomalies elsewhere and situations that can be exploited by others to gain an unfair or unreasonable advantage.

Also, more errors and anomalies are likely to occur when time is short to develop revised legislation, standards, conformity assessments, accreditations and market surveillance processes etc. Obviously it is far from certain that the EU will agree to this in any instances. If they did it would impose new uncertainties where before matters were fairly settled and predictable.

Unknowing Rule-giving Mrs May and Co bring even more Single Market and EEA chaos

The EU and EFTA countries who are members of the EEA are being expected to amend their Single Market/EEA legislation in agreement with and based upon the UK negotiators' directions. They are to be rule-takers to accommodate Mrs May. So far there is little indication that the UK's negotiators actually understand much, if anything, about the minutiae of the EU Directives. Even if the EU agreed, the resulting outcome is most likely to be more, largely avoidable chaos all round amongst customers, suppliers, regulators, conformity assessors (e.g. Notified Bodies) and organisations involved in market surveillance. The frequent questions would be "Where do I find the requirements?", "Must we comply with this requirement?", "What does this requirement actually mean?", and "How much is this going to cost us?"

No Go Chaos for Nobos and their Conformity Assessments of Products

Notified Bodies need accreditation for carrying out mandatory independent conformity assessment on a wide range of products to be placed on the market in the EEA. They need separate accreditation (Designated Body, Debo) when carrying out assessments relating to national specific or special cases covered by EU/EEA legislation. Mrs May's proposals are for *harmonisation with EU rules* applying to products to be exported but not to services. Clearly the work of Nobos and Debos are services falling outside any compliance with *EU rules* whatever that vague term is supposed to mean; for example, EU Directives with or with European specifications, mandatory conformity assessment, market surveillance etc.

Under Mrs May's proposals a new product could be assessed by a Debo and then exported to the EEA where the Debo's accreditation and product conformity assessment is currently not recognised. Getting this recognition raises a host of practical problems, such as who gives the Debo accreditation, how is the Debo assessed, who keeps the register of accredited Debos and test

houses, and what should the Debo now include in its product conformity assessment and certification? Where an existing product undergoes a material change requiring further or updated assessment, more confusion must result in determining whether this is Debo or Nobo work or a combination and who does what.

Mrs May's Greatest Legacy

Mrs May's Government is proposing an unworkable Brexit in name only. However, instead they could have opted for a workable real Brexit by remaining in the Single Market (or wider European Economic Area, EEA) under much more favourable and flexible conditions by re-joining the European Free Trade Association (EFTA). (Further information see The EFTA/EEA Solution to the Current Brexit Impasse, Brexit Reset, Eureferendum.com, various posts on Campaign for an Independent Britain and affiliates)

This country had a long-standing world-leading tradition of bringing high standards to somewhat haphazardly managed activities, for example, in the fields of quality management and safety management. These have become world standards, widely accepted and followed elsewhere. Mrs May seems determined to turn our relations with the EU, including supplying a wide range of products, into exporting confusion and chaos. Will the EU buy it?