Submission to:
Department for Business & Trade - Smarter Regulation: UK Product Safety Review Consultation (Closing date 24 October 2023)

Submission date:
24 October 2023

Compiled by:

AIRTO - Association of Innovation, Research and Technology Organisations

Contact:
Email: enquiries@airto.co.uk

INTRODUCTION

AIRTO, the Association of Innovation, Research & Technology Organisations, on behalf of its members, has prepared this written response to the consultation for the UK Product Safety Review.

AIRTO represents the UK's extensive Innovation, Research and Technology (IRT) sector, which employs 57,000 highly skilled people, has a combined annual turnover of £6.9Bn and contributes £34Bn to UK GDP. Organisations in this critical sector work with industry, government and academia to promote and implement innovation, and provide technical solutions to challenges and crises. The IRT sector is a key partner for industry in delivering the support needed for innovation driven economic growth. Some of AIRTO's member organisations are UK Conformity Assessment Bodies.

RESPONSE TO CONSULTATION QUESTIONS

1. Are there any specific products where action within the current product safety framework could be taken to reduce business burden, encourage innovation and/or increase consumer choice without compromising safety? Please provide evidence to support your suggestion.

Specific products where action within the current framework would be beneficial, are those requiring third party assessment by an independent Conformity Assessment Body (CAB). This suggestion has been extensively discussed with within the Department for Business & Trade's (DBT's) UK Conformity Assessment (UKCA) Industry Stakeholder Group over many months. Most recently, the consequences of the decision to extend unilateral recognition of Conformité Européene (CE) marking has been discussed. This is of clear advantage to importing businesses trading with the European Union (EU) but, in the absence of a mutual recognition agreement (MRA) between the UK and the EU regarding how and where CE marking is applied, this will require the UK's products to be sent into the EU for assessment by an EU Notified Body. This may lead to delays and possibly increased costs for UK exporting businesses. It is likely also lead to loss of product marking business by UK Approved Conformity Assessment Bodies (CABs), resulting in loss of commercial viability for those providers and, consequentially, diminishing assessment and product marking capabilities residing in the UK.

There is already evidence from CABs that relatively few companies have chosen to pursue UKCA marking of products since its inception. Rapid action is needed to stabilise the viability of the UK's CABs. A key action required to bring stability would appear to be a specific bilateral MRA between the UK and EU covering product testing, assessment and marking, particularly where the products are safety critical and require independent third-party conformity assessment in order to be placed on the UK market. Alternatively, UK CABs may need financial help to sustain their capabilities. There is also evidence that some EU based suppliers to the UK might withdraw from our market if required to obtain a UKCA mark for the UK in addition to a CE mark for their own domestic territories. This would result in a reduction in consumer choice of products on the UK market.

To maximise consumer choice and reduce costs the UK regulations for placing products on its market need to facilitate both imports and supply by domestic UK businesses. Costs can be minimised by removing the need for safety assessment and testing in two different territories to two different sets of assessment and testing requirements. Divergence between the EU and UK requirements might appear to offer a lower cost route to the UK market for businesses opting for UKCA. However, unless UKCA marking maintains equivalence with EU requirements and is accepted within the EU, the potential to achieve economies of scale for exporting businesses will be lost for UK-based product manufacturers, meaning additional overhead costs and higher prices for UK-based businesses (relative to their present costs and EU based competitors).

It is worth noting some conflicts between policy ambitions included in the main body of the consultation questionnaire document. Page 13 discusses how to support UK companies wanting to trade internationally. Such companies would need to seek the third-party conformity assessments required for export markets at lowest cost and with greatest ease of sourcing from internationally recognised accredited sources. To assist with this, the UK unilaterally accepts CE marks (as stated on page 12). This helps UK companies exporting to the EU avoid costs of dual product marking by avoiding having to obtain UKCA marking as well as CE marking; but without mutual recognition by the EU of CE marks applied by CABs in the UK, companies exporting to the EU would be better served by going to an EU-based Notified Body for conformity assessment services. This deprives UK-based CABs of business and complicates and restricts cost-effective sourcing of CE marking services for these exporting companies. That frustrates the ambition to support exporting companies as expressed on page 13.

With a diminution of business placed from UK clients and elimination of the new business opportunities offered by the requirement to have EU companies obtain UKCA marks from UK CABs, UK CAB services will become more expensive to maintain and develop and hence costs will rise unless supported by government intervention.

UK divergence from EU regulations is likely to increase conformity assessment requirements as acceptance of CE marks may not be sufficient for the UK market and a UKCA mark may be required as well (page 14). However, these opportunities for UK CABs lie too far in the future to sustain the UK's present product marking capabilities and capacities on a commercial footing. Also, such divergence, on present indications, is likely to prompt a withdrawal of overseas suppliers from the UK market due to the resulting increase in costs of supplying the comparatively small UK market.

Some immediate actions are needed to alleviate difficulties for UK CABs and to establish policies for construction and other safety critical products beyond DBT's purview. Further evidence from a systematic survey of UK CABs' current and recent levels of business might help to demonstrate their evolving difficulties and help government plan for necessary mitigations.

2. Do you agree that we should examine options for a framework where regulatory requirements are more closely linked to the risks of the product in question? Yes / No / Don't know
Please provide reasoning (including relevant evidence), considering risks and benefits, to support your answer, particularly any positive impacts or downsides on you or other stakeholder groups.

Yes, to avoid needless expensive independent assessment and to ensure that potentially dangerous products that might otherwise escape independent scrutiny will be properly assessed. The consideration of risk will have to include take account of how products might or will be used and applied. That is likely to be quite complex and may require investigation of multiple uses and applications but will probably be worthwhile. Taking account of both initial investigation and subsequent assessment and testing costs, it is unclear as to whether such an approach will be more or less expensive overall, but such an approach may well benefit better assurance of safety. Consider, for example, recent safety problems with building products, and electric bicycle and scooter battery fires.

The benefit all around should be a better understanding of the need for assessment and testing of products that could pose a safety hazard and constraints on how they should be used. It should enhance the government's reputation for responsible regulation and thorough protection of public and workplace safety.

This approach may prove to increase costs in the regulatory system itself but could result in significant savings associated with the prevention of incidents, damage and harm to the public as exemplified above in the first paragraph.

***3. What role should standards and testing requirements play in supporting businesses to comply with the new approach? Please provide reasoning (including relevant evidence) to support your answer, particularly any positive impacts or downsides on you or other stakeholder groups*.**

Standards and testing requirements should provide comfort to consumers and users that, in the event of harm being caused, suppliers, government and regulators took all reasonable steps to ensure that appropriate measures have been taken to ensure that best available knowledge and practices have been followed in the design, manufacture and application of products on the market.

A downside is that keeping standard and testing requirements up to date while new technologies and innovative products are evolving may prove difficult, time-consuming, and costly. This is true for all involved: government, regulators, CABs and manufacturers. New product introductions may be later than would otherwise have been the case.

4. What types and areas of guidance would most likely help you understand your requirements under any new framework? Please provide reasoning to support your answer.

Early participation by trade bodies and businesses in the formulation of standards, testing requirements and guidance would be extremely helpful; also, widespread dissemination of explainers. Thorough thinking through of all aspects of new approaches should be undertaken and more industry and business knowledgeable people could usefully be employed on the government side and by regulators. The latter should shorten the learning curve and lessen costs for those charged with implementing new measures within the proposed framework.

This is among lessons learned from the DBT UKCA Industry Stakeholders Group dialogues and DBT activities to inform and liaise with businesses during the transition to UKCA marking over an extended period post Brexit.

5. Whilst anticipated costs and benefits would depend on the design of a new framework, what type of costs, quantified, if possible, would you anticipate in understanding a new framework? Please provide relevant evidence to support your answer or clarify whether this is from your own experience. (For understanding, the process of familiarising yourself with a new framework and not the costs to comply with a chosen framework).

The list of costs that should be considered include the following:

- Costs associated with understanding the intent and ambition of new measures and the framework itself plus the costs of assisting with their formulation; this includes government and regulators' costs, CABs' costs where necessary and industry and business costs.
- Costs associated with sustaining and developing CAB capabilities in preparation during the introduction and transition to the operation of the new framework.
- Costs associated with engaging with international stakeholders including overseas suppliers to the UK and updating them on new conformity requirements.
- Costs of researching current and future markets and likely conformity assessment requirements need to be addressed.

Cost estimates could be sourced by consulting with all the stakeholders involved. In particular, their estimates of the costs incurred in moving from CE to UKCA product marking might be illustrative.

The above comments are based on direct experience with the DBT UKCA Industry Stakeholders Group, with CABs which are members of AIRTO and with some other trade bodies.

6. Do you support the development of guidance to assist businesses in carrying out pre-market risk assessment? Yes / No / Don't know
Please provide reasoning to support your answer, including any views on the most effective way to support pre-market risk assessments in the UK. Please provide relevant evidence to support your answer, particularly in relation to any impacts on you or other stakeholder groups.

Yes, for UK companies, because businesses may not have the required expertise and they should be helped to avoid what might otherwise turn out to be overly reckless risk taking. A pre-market risk assessment could therefore avoid misguided developments and wasted expenditure.

7. Do you agree with the proposal to establish a derogation process to help ensure supply of critical products in emergencies? Yes / No / Don't know
Please provide reasoning (including relevant evidence) to support your answer, particularly any impacts (business costs and benefits) on you or other stakeholder groups, and for any suggestions you have on key aspects of the design/implementation.

Yes, but only where the harm would otherwise be greater if products were to be held back. This would clearly require a risk-based use assessment case for each instance.

For further information, please contact:

Dr Jane Gate, Executive Director, AIRTO Ltd.

Email: enquiries@airto.co.uk