

Anticipating the impact of Brexit on multinational companies

Joint European Trade Union Federations' Recommendations to EWC/SE coordinators and worker representatives in SNBs, EWCs and SEs

September 2018

Brexit: current state of play

On 29 March 2017, the United Kingdom (UK) formally notified its intention to leave the European Union (EU).

Negotiations on the UK's withdrawal are ongoing, but their outcome remains so uncertain that it makes any prediction about the future very difficult. Different scenarios are still on the table, including that of a possible transition period (i.e. a fixed-term period of time during which the UK will no longer be a member of the EU but will continue to fully apply the EU *acquis* and European laws).

As things now stand, should a Withdrawal Agreement be reached between the EU and the UK, it would have to be formally ratified before 29 March 2019 by both the EU and the UK institutions. Should negotiations on a Withdrawal Agreement fail and/or no transition period be agreed, the UK will automatically exit the EU on 29 March 2019 and all EU law will cease to apply in the UK (this is referred to as the 'no deal' or 'cliff-edge' scenario).

The nature of the future relationship between the UK and the EU is still the subject of harsh discussions and important developments are expected to take place in the coming months.

The consequences that Brexit could have on workers' rights originating from EU law are also unknown.

According to a recent Act adopted in the UK¹, direct EU law (EU regulations and decisions), as well as UK laws which transposed EU directives (such as the EWC Directive), will automatically be transferred into UK domestic law on the day of exit. This is meant to allow UK institutions to unilaterally decide thereafter which pieces of legislation will be maintained, changed or repealed.

Concerning EWCs, the UK government has announced that in the event of 'no deal' between the UK and the EU, the enforcement framework, rights and protection for employees in the UK will continue to be made available as far as possible. Provisions relevant to the operation of existing EWCs would remain in force, although no new EWC could be set up in the UK. (Requests for new EWCs made but not completed before 29 March 2019 would continue to proceed however.)². As this is only an intention on the part of the current UK government in respect of going "as far as possible" under a "no deal scenario", the announcement must be viewed with great caution.

¹ The [European Union \(Withdrawal\) Act 2018](#).

² See [Guidance: workplace rights if there's no Brexit deal](#) published by the UK government on 23 August 2018.

Our trade union guiding principles

European trade unions reject a 'hard Brexit' which would not be beneficial either for workers in the UK or workers in the EU. Workers on both sides of the Channel have shared concerns about the future: existing workers' rights must be protected and there should be a common level playing field so that the UK continues to uphold EU employment and social standards³. Preventing social dumping and a race to the bottom is fundamental.

Transnational solidarity, which has been fostered over the years in EWCs and SEs, must grow even stronger. It is more than ever needed to fight attempts by multinational companies to jeopardise workers' rights or use Brexit to play off workers and sites of different countries against each other. Trade unions and worker representatives in multinational companies must therefore ensure that:

- **Information, consultation and participation rights are not watered down.** Workers' right to a strong say on envisaged company decisions and their potential social consequences is a fundamental right which must be safeguarded for workers across Europe.
- The **likely impact of Brexit** on both the Special Negotiating Body (SNB)/European Works Council (EWC)/works council and board of companies under the *Societas Europaea* statute (SE), as well as on company strategy, is to be discussed as early as possible. European Trade Union Federations stand for a genuine **anticipation and management of change in a socially responsible way** and will not let multinational companies use Brexit as an excuse to trigger attacks on terms and conditions of employment.

The magnitude of the challenge requires careful anticipation: more than 700 multinational companies which have established an EWC or adopted the SE statute have operations in the UK; at least 2,400 representatives of UK workers in EWCs and SEs are wondering about their future; and the situation of the ca. 140 EWCs and SEs based on UK law remains a moot point.

The time to act is now. The European Trade Union Federations have thus jointly adopted the following recommendations to EWC and SE Coordinators, as well as to worker representatives in SNBs, EWCs and SEs.

**#1. Brexit has not yet happened!
Nothing changes until 29 March 2019**

The only certainty that exists is that, at present and at least until the end of March 2019, European law still stand in the UK. The UK currently remains a member of the EU and is covered by all its provisions. The situation of EWCs and SEs based on UK law, as well as the situation of UK representatives in SNBs, EWCs and SEs; **it thus remains unchanged for now.**

The same rights and duties are secured and continue to fully apply. Should multinational companies question the right of UK representatives to participate in SNB's, EWC's, SE's or any other EU activities, or whether certain obligations still apply, it should be made crystal clear that **nothing at all has changed as yet.**

This also means that UK-based multinational companies that fulfil the legal requirements to establish an EWC are still obliged to launch the establishment of an SNB if an official request has been submitted.

³ See ETUC positions [On the future partnership between the UK and the EU](#) (December 2017) and [Laying the foundations for a level playing field – ETUC statement on the future EU-UK partnership](#) (March 2018).

#2. If UK representatives sit on your EWC, SE-WC or SE board: Take an active role in securing their rights

Given the current level of uncertainty, it is absolutely crucial to ensure that UK workers will still be represented in EWC and SE Works Councils as well as on the board of SE (when applicable) whatever scenario prevails. The situation may differ from one company to the next. The European Trade Union Federations therefore recommend a **flexible case-by-case approach**.

Step 1: Review the EWC/SE agreement to see if it needs adaptation

Some agreements already include provisions on the representation of countries from outside the European Economic Area (EEA). In this case adaptation may not be necessary.

Step 2: In cases where adaptation is needed, it is important to define the scope of the change by amending the EWC/SE agreement (which can be done also in an appendix). The European Trade Union Federations propose the following clause which can be adapted to suit the specific needs of the respective EWC/SE:

In the event that the UK is no longer a member of the European Union or European Economic Area and that the EWC [SE] Directive (transposed into TICER 2010) [(transposed into the European public limited-liability company regulations 2009)] is no longer applicable to the UK, the parties agree that the UK will continue to be fully covered by this agreement and that the EWC [SE works council] will remain competent for all transnational issues in relation with the UK.

The EWC [SE works council] members from the UK shall continue to enjoy the same prerogatives, rights and protection as the other members of the EWC [SE works council] as outlined in this agreement.

The following arguments can be brought forward when discussing the negotiation, renegotiation or simply adaptation of your EWC agreement with management.

Firstly, the Recast EWC Directive (art. 1, §6) foresees the possibility for companies to decide on a wider scope of application than the EU or EEA alone. The European Trade Union Federations have a long-standing experience in securing the participation of workers from non-EEA countries (e.g. Switzerland and EU candidate countries) in EWCs and SEs.

Secondly, even before the EWC Directive applied in the UK (as from December 1999), the vast majority of multinational companies with an EWC voluntarily decided to include representatives of UK workers although there was no legal obligation to do so. Excluding them now would be unreasonable.

Thirdly, a significant number of multinational companies have already agreed to adapt their EWC/SE agreement accordingly. See examples listed in the appendix.

Such clauses should also help to ensure that the EWC remain responsible for cross-border matters concerning the UK. The rights of EWC members, from all countries, to be informed about and consulted on transnational issues which include also the UK must be preserved.

#3. If your EWC/SE is governed by UK law: Take an active role in defining a new governing law

Some multinational companies have decided to anticipate the uncertainty about the future legal status in the UK of the EWC/SE Directives and have already transferred their European representative agent from the UK to another EU country. Several non-European companies with EWCs headquartered in the UK may also decide not to wait for the outcome of negotiations with the EU and to transfer their European seat without delay.

We must ensure that the choice of the new applicable national law is driven by an objective criterion and not just a management desire to take advantage of the situation to move to a low-standard country.

Although choosing the European representative agent is a management prerogative, the goal is to negotiate an explicit clause based on the objective criterion already foreseen by the Recast EWC Directive (art. 4, §2):

Should the UK law transposing the EWC/SE Directive be repealed, the national law applicable to the EWC/SE will become the law of the country with the highest number of employees.

In some specific instances, other criteria may be considered (country with the most favourable transposition law or case law, country in which the European management is headquartered...).

#4. Put Brexit on your EWC/SE agenda: Anticipate change in company strategy and businesses

Securing the future of jobs of all European workers will be key as multinational companies might revise their strategies in the light of the consequences Brexit could have on integrated production networks, supply chains and internal trade with the EU.

The European Trade Union Federations strongly recommend putting Brexit as a recurring item on the agenda of your EWC / SE meetings, asking management to provide early information and conduct consultation on the following:

- Forecast of the possible impact of Brexit on the **financial and economic situation, including debt capacity**
- Forecast of the possible impact of Brexit on the **development of productions and sales, all along the supply chain, in all countries**
- Forecast of the possible impact of Brexit **on the price of raw materials**
- Current situation and forecast of the possible impact of Brexit on **employment in all countries and especially in the UK**
- Forecast of the possible impact of Brexit **on investment plans in all countries**
- Possible **transfers of production, divestments, cut backs and closures** resulting from Brexit
- Possible relocation of the European headquarters (from or to the UK)

It is crucial to request to be informed and consulted also on any envisaged countermeasures.

#5. Have a look at the number of employees per country!

In some instances, the mere existence of the EWC might be called into question as a consequence of the UK leaving the EU. Should the UK headcount no longer be taken into account, some multinational companies will fall below the threshold for establishing an EWC (at least 1,000 employees in the EU/EEA; in at least two undertakings in two different countries with at least 150 employees each). Uncertainty prevails as to the concrete consequences this may have.

In order to preempt possible issues, the European Trade Union Federations recommend that each EWC review the distribution of the headcount per country and **assess whether there is a risk of falling below the minimum threshold should the UK headcount be excluded.**

Should that be the case, the EWC chair and/or coordinator is/are requested to immediately inform the secretariat of their respective European Trade Union Federation (see contact details below) to discuss a possible course of action on a case-by-case basis.



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Appendix: examples of adapted EWC/SE agreements

Rockwell Collins	The UK will continue to be fully covered by this EWC agreement after Brexit.
Kuehne+Nagel	Any founding country of the EWC as established in 2014 and listed in Annex 1 of the Agreement will remain part of the Agreement irrespective of the country's EU and/or EEA membership status at present or future times.
UTC Fire & Security	The UK will continue to be considered as a participating country and will continue to come within the scope of the agreement as indicated in article 1 of the current agreement regardless of its membership status with the EU.
General Electric	In the event that the UK ceases to be a member of the EU or the EEA it shall nevertheless continue to fall within the scope of this agreement.
Total	For the current mandate, the management and the trade union organisations agree to maintain the mandates of the members from the United Kingdom even if the latter comes to leave the European Union and the European Economic Area.
Ardo	In the event that the UK is no longer a member of the European Union or EEA and the TICER Regulations are no longer applicable to UK employees, Ardo will continue to allow UK employees to be covered by this agreement and allow UK representation with full rights as outlined in this agreement.
Asahi AEL	In the event of a country leaving the European Union or the European Economic Area, this country shall remain within the scope of this Agreement.
Cargill	The United Kingdom shall also continue to fall within the geographical scope of this Agreement, regardless of the future position of the United Kingdom in the European Union and/or the EEA.
