

FAQs – Brexit: What impact does this have on European Works Councils?

Nearly 52% of eligible voters in the United Kingdom have voiced opposition to their country remaining in the EU. This is thus a journey into uncharted territory. For the first time in EU history, a member country aspires to leave the community - a scenario whose consequences are still difficult to foresee.

In addition to numerous ambiguities, there is also the issue, inter alia, of the **consequences of the UK referendum for the European Works Councils established under UK law and for EWC members originating from the United Kingdom.**

Here are initial answers to some key questions:

What happens after the Brexit vote?

Only when the UK officially declares its wish to leave the EU according to Article 50 of the EU treaty will the **exit negotiations** begin which can last up to two years from the exit application, or even beyond that, where applicable.

- The UK government must initially, of its own accord, lodge an appropriate application with the EU Council of Ministers. Only then can the terms of withdrawal start to be negotiated. In this way, the relationship of the EU with the then new "third state" UK will be defined and thus also the validity or elimination of existing EU law will be clarified.
- The exit agreement must then receive a qualified majority (more than 2/3) of the votes of the Member States in the EU Council of Ministers, the approval of the European Parliament and also the UK Parliament itself.
- If there is no agreement in future negotiations, it is clear that the EU treaties, and therefore the EU law based on them, including all Directives such as the EWC Directive, shall no longer apply two years after the notification of the withdrawal request.
- Until then, the UK shall remain a Member State of the EU - with all rights and obligations. **Until the actual completion of the withdrawal from the EU, the legal basis shall continue to apply without restriction.** Thus, the existing EU law shall also continue to apply without restriction to the territory of the UK.

It is therefore assumed that – although there is no historical experience – **the EWC law applies in any case for at least another two years without restriction and all legal consequences resulting from shall have effect until an exit and thus the invalidity of existing EU law is determined.**

Does the majority NO have a direct legal impact on UK EWC members or on EWC bodies with group headquarters in the UK?

The referendum alone does not have any direct legal effect. It is not constitutionally binding. **As regards the European Works Councils and the UK members of EWCs, nothing is going to change for them as long as the UK is a member of the EU.**

- As for existing committees, their responsibilities, expertise and composition shall not change for the time being.
- This also means that membership of the UK colleagues in existing European Works Council bodies is fully maintained up to this point;
- European Works Councils in corporate groups and groups of companies with central management in the UK (established mostly under UK law) shall remain in existence.
- The same also applies to "special negotiating bodies" already set up for the establishment of European Works Councils. - Although for corporate groups with a registered office in the UK, it now has to be

considered how to make the EWC agreement to be negotiated "weatherproof" for the future (this relates, inter alia, to issues of future jurisdiction in an EU country, protection of EWC membership of UK colleagues, even after the exit of the country is confirmed, etc.)

Under which scenarios/conditions will EWC law also apply to the UK after leaving the EU?

The UK must - in order to limit the economic consequences to a minimum - determine quickly the path along which it wishes to travel. This also depends essentially on whether EU law will continue to have a legal effect and how it continues with existing European Works Councils and UK EWC members following a potential formal EU exit.

Should the UK leave the EU, then a number of post-Brexit scenarios are currently being discussed.

- **Like Norway, Iceland or Liechtenstein, will it seek a return to the EFTA and therefore membership within the EEA?**
 - > Then existing EWC law (which has indeed also hitherto involved the EEA zone) and thus also the scope of application of existing EWC agreements shall continue to apply without restriction.
- **Like Switzerland, will it make efforts to access the EU internal market through bilateral agreements?**
 - > Then the country would fall outside the formal mandatory scope of application of EWC law. **It is questionable whether the UK will continue to maintain the existing EWC law voluntarily.** In particular, even in Switzerland the EWC Directive was not incorporated despite extensive acceptance of EU law into the national law.
 - > As with numerous European Works Councils (inter alia, also in Swiss corporations), the extension of the scope of application of existing and future EWC agreements should be expressly established within the territory of the UK and also (roughly analogous to colleagues in corporations in Switzerland) and its participation in the EWC should be explicitly agreed.
- **Will a customs union with a far-reaching association agreement along the lines of Turkey provide a model for future economic ties with the EU?**
- **Or is the commercial framework of the World Trade Organisation (WTO) to serve as a basis for future economic ties with the EU and is a free trade agreement between the EU and the UK therefore to be negotiated?**
 - > Even in these two cases, EU law per se does not apply. The scope of application of EWC agreements should be expressly established within the territory of the UK and their participation in the EWC explicitly agreed.

In principle, the continued application of the EWC Directive (as well as further EU legislation) in the UK could also be agreed for non-membership. This option appears highly unlikely.

Will UK EWC members lose their mandate if the UK leaves the EU?

Prior to 15 December 1999, there was no EWC legislation in the UK. Nevertheless, many large UK companies had founded an EWC at this time. The EWC agreement was then concluded, for example, according to Belgian, German, Irish or French law. In general, the workforce in the UK was incorporated into the EWC.

For companies with a registered office in Switzerland, the local workforce is now represented in the EWC in over 70% of cases. This suggests: a massive loss of UK mandates will probably not occur in practice.

- > **Nevertheless, it is advised to make a timely adjustment to the existing EWC agreement in terms of its territorial scope of application and therefore also to explicitly agree the right to participate of UK colleagues as full members of the EWC.**

What happens with agreements concluded under UK law?

With a view to EWC agreements, which are subject to UK law, there are several open questions that have not yet been conclusively answered: such as whether they continue to apply without restriction or whether a new jurisdiction – lying within the EU – must be selected or whether existing EWC agreements have to be completely renegotiated.

The following may in any case be determined:

- In general, EWC bodies were negotiated based on procedural rules based on an EU directive which was also implemented in UK law. A concluded EWC agreement does not automatically lose its validity "overnight" just because the procedural law underlying it is no longer valid.
- Thus, even a formal statement on the withdrawal of the UK from the EU would have no effect on the existing bodies.
- Existing agreements shall endure, as long as they neither expire nor are terminated in accordance with the contractual conditions stipulated in the EWC agreement.

In any case, it is recommended that the exact impact of Brexit be examined in detail and appropriate adjustments to the existing EWC agreements be made in a timely manner in order to be well-prepared for the "aftermath".

What about companies headquartered in the UK? Should they also set up an EWC in future?

Corporations and groups of companies with registered headquarters in the UK that comply with the requirements of the EWC Directive within the then remaining EU or EWC states (i.e. more than 1000 employees and more than 150 in at least 2 countries) should also follow the rules of the EWC Directive in future.

- Then, however, the same conditions shall apply to them as currently apply to multinational corporations currently based, for example, in the USA or Switzerland or South Africa, where the UK sites are not to be included when calculating the employment indicators for the establishment of a EWC.
- The central management is to designate a headquarters within the formal scope of application of the EU Directive on the EWC, which is also relevant for ensuring which national transposition law applies to the EWC during the establishment of a EWC.
- If no such EU headquarters are designated in the EU/EEA, then, as in all other cases in the past, the rule is that the location which accommodates the largest number of employees is to be regarded as the EU headquarters.

Note: Although there may also therefore be an EWC in a UK corporation in future, there is no guarantee that UK representatives should also be represented in the negotiating body tasked with negotiating an EWC agreement and consequently also in the EWC itself.

- The EWC Directive makes no provisions for guaranteed registered offices outside the EU/EEA.
- This must - just as for colleagues from Switzerland - be explicitly negotiated and agreed with the company management.

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