

## Managing 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

January 2021

#### Brexit: current state of play

Four years after the UK referendum, Brexit has taken place. Since 1 January 2021, the United Kingdom is no longer a Member State of the European Union, nor part of the European Economic Area (EEA). As from that date, a new Trade and Cooperation Agreement governs the relationship between the UK and the EU with a view to regulating their economic and social partnership<sup>1</sup>.

As far as workers' fundamental rights at work, their right to information and consultation at company level, as well as their rights in the event of a restructuring are concerned, the new Trade and Cooperation Agreement sets in stone a non-regression clause:

*A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce its law and standards.*

Source: [Trade and Cooperation Agreement](#), Part two, Heading one, Title XI, Chapter six, Article 6.2

The non-regression clause ensures that Brexit cannot lead to workers' rights being reduced or weakened compared to the situation which was in force before 1 January 2021.

In addition, the UK adopted a legislation in 2018<sup>2</sup> according to which direct EU law (EU regulations and decisions), as well as UK laws which transposed EU directives (such as the European Works Council Directive), were automatically transferred into UK domestic law on the day of Brexit. Under that UK domestic law, representatives of UK workers in EWCs, as well as in works councils and corporate boards of companies under the *Societas Europaea* statute (SE), can keep their rights.

#### Our trade union guiding principles

Building on the non-regression clause and the transfer of the EWC and SE Directives' transposition laws into UK domestic law post-Brexit, the European Trade Union Federations will oppose any attempt to reduce the rights of Special Negotiating Bodies (SNBs), European Works Councils (EWC), works councils and corporate boards of companies under the *Societas Europaea* statute (SE) which existed prior to Brexit, as well as the UK representation therein. Preventing social dumping and a race to the bottom is fundamental.

<sup>1</sup> The trade and cooperation agreement between the European Union and the United Kingdom is available [online](#) in all EU languages. Following ratifications by the European Council and the UK Government, the Trade and Cooperation Agreement came into provisional application on 1 January 2021. Full application is dependent on the ratification of the European Parliament – which is currently foreseen for March 2021 at the latest.

<sup>2</sup> The [European Union \(Withdrawal\) Act 2018](#).

Although a deal has been reached, Brexit may be disruptive in many sectors and lead to potential job losses. Hence, transnational solidarity, which has been fostered over the years in EWCs and SEs, must grow even stronger. It will be needed - more than ever - to fight attempts by multinational companies to jeopardise workers' rights, or to 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 an SNB, EWC, SE Works Council or SE Board, as well as on a company strategy, should be dealt with 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 attention: 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 legal situation of the ca. 140 EWCs and SEs based on the UK transposition laws of the EWC and SE directives will change.

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

## #1. If UK representatives sit on your EWC, SE-WC or SE board: Secure their rights

On 31 December 2020, the UK government released a guidance note on UK participation in EWCs following the ratification of the EU-UK Trade and Cooperation Agreement. The guidance note states that:



[...]

### If you're already a representative of your company's EWC

If you became a representative of your company's EWC before 1 January 2021 you can continue to be involved. You will still be entitled to paid time off to carry out your role.

**Source:** <https://www.gov.uk/guidance/participating-in-a-european-works-council>, consulted on 7 January 2021

To best secure that UK workers will still be represented in EWC and SE Works Councils, as well as on the Board of SE (when applicable), the European Trade Union Federations recommend you adapt your EWC/SE Agreement according to the following **flexible case-by-case approach**.

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

Some agreements already include provisions for the representation of countries from outside the European Economic Area (EEA), whose member(s) enjoy the same rights, prerogatives and protection as the other members in the EWC, SE-WC or SE Board. In this case, adaptation may not be necessary.

Should representatives of non-EEA countries sit on the EWC, the SE-WC or the SE Board, with an observer status only, or without the same rights as the other members, then Step 2 (below) applies.

**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 also be done 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:

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 to 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.

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

The following arguments can be brought forward when discussing the negotiation, renegotiation or simply adaptation of your EWC/SE Agreement with the 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 was 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 adapted their EWC/SE Agreement to secure the representation of UK workers. See examples listed in the appendix.

Fourthly, information and consultation rights are part of the level playing field defined by the EU-UK Trade and Cooperation Agreement and are safeguarded by a non-regression clause.

Fifthly, the UK transposition law of the Recast EWC Directive (referred to as the “TICE Regulation”<sup>3</sup>) has been retained as part of UK domestic law. It continues to regulate the rights and duties of UK representatives in all EWCs post-Brexit. Moreover, in the specific situation of EWCs which were previously based under UK law, the UK domestic legislation secures the mandate of UK workers representatives. This means that removing now the mandate of UK representatives from EWCs which were based under UK law before Brexit, will be in breach of the UK domestic law. Should such a case arise, please contact your European Trade Union Federation for further advice and guidance (see contact details below).

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<sup>3</sup> See the latest version of the TICE regulation as amended by [The Employment Rights \(Amendment\) \(EU Exit\) Regulations 2019](#).

## #2. If your EWC/SE used to be governed by UK law: A new governing law now applies

As of 1 January 2021, in accordance with guidance from the European Commission<sup>4</sup>, those EWCs that previously had their central management (or designated representative agent) located in the UK will be transferred to another Member State of the Europe Union. In the event that central management had not designated the new EU Member State where their representative agent will be located as from 1 January 2021, in accordance with guidance from the European Commission, the role will be assumed by the Member State with the largest number of employees:

*As of that date [i.e. the end of the transition period on 31 December 2020], the role of the representative agent will be automatically transferred to the establishment or group undertaking employing the greatest number of employees in a Member State, which will become the 'deemed central management' pursuant to Article 4(3) of Directive 2009/38/EC.*

Source: [European Commission](#)

Unless specified otherwise in the EWC Agreement, the law governing the EWC Agreement is that of the EU Member State where the central management (or representative agent) is located.

If and how the TICE Regulation, which is now part of UK domestic law, interferes in the future of EWCs which were formerly based under UK law, remains to be clarified.

## #3. 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 light of the consequences that 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 to 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 trade and in particular on the import costs of raw materials;**
- Current situation and forecast of the possible impact of Brexit on **employment in all countries and especially the UK;**
- Forecast of the possible impact of Brexit **on investment plans in all countries;**
- Possible **transfers of production, divestments, cutbacks and closures** resulting from Brexit
- Possible relocation of the European headquarters (from or to the UK).

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

<sup>4</sup> See the [European Commission's preparedness notice on EWCs published in April 2020](#).

## #4. 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 pre-empt possible issues, the European Trade Union Federations recommend that each EWC reviews 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.



[www.industriall-europe.eu](http://www.industriall-europe.eu)

**Bruno Demaitre**

+32 476 54 09 90

[bruno.demaitre@industriall-europe.eu](mailto:bruno.demaitre@industriall-europe.eu)



[www.uni-europa.org](http://www.uni-europa.org)

**Annika Flaten**

+32 478 79 15 39

[annika.flaten@uniglobalunion.org](mailto:annika.flaten@uniglobalunion.org)



[www.effat.org](http://www.effat.org)

**Enrico Somaglia**

+32 491 61 71 00

[e.somaglia@effat.org](mailto:e.somaglia@effat.org)

European Federation  
of Building  
and Woodworkers



[www.efbww.eu](http://www.efbww.eu)

**Thilo Janssen**

+32 473 13 43 27

[tjanssen@efbww.eu](mailto:tjanssen@efbww.eu)



[www.epsu.org](http://www.epsu.org)

**Guillaume Durivaux**

+32 489 39 48 91

[gdurivaux@epsu.org](mailto:gdurivaux@epsu.org)



[www.etf-europe.org](http://www.etf-europe.org)

**Myriam Chaffart**

+32 475 34 36 51

[m.chaffart@etf-europe.org](mailto:m.chaffart@etf-europe.org)

## Appendix: examples of adapted EWC/SE agreements

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.
ETEX	Even if a Brexit would happen, management and the EWC agree that the UK shall remain fully within the scope of the EWC Agreement. EWC members from the UK shall be treated as all other EWC members as if the UK would still be part of 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.
Korian Group	This Agreement applies to subsidiaries or facilities located in one of the 28 EU Member States that leaves the EU. Any such countries shall remain members of the [European Works] Council.
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.
LafargeHolcim	The present Agreement is applicable to all LH Group Companies present in the EEA, plus Switzerland, and shall include acceding countries, in keeping with the obligations laid down in Directive 2009/38/EC, or countries leaving the EEA.
Rockwell Collins	The UK will continue to be fully covered by this EWC Agreement after Brexit.
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 Art. 1 of the current Agreement, regardless of its membership status with the EU.