



Brussels, 28 March 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF INFORMATION AND CONSULTATION OF WORKERS AT TRANSNATIONAL LEVEL

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement¹ establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').² The United Kingdom will then become a 'third country'.³

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, stakeholders are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the EU rules in the field of information and consultation of workers at transnational level, in particular Directive 2009/38/EC on European Works Councils,⁴ no longer apply to the United Kingdom. This has in particular the following consequences:⁵

Directive 2009/38/EC sets out the conditions for setting up European Works Councils as well as their functioning and potential dissolution. In particular, Article 2 of Directive

¹ Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

³ A third country is a country not member of the EU.

⁴ Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ L 122, 16.5.2009, p. 28.

⁵ This notice does not address issues of European company law, and in particular the consequences of the withdrawal of the UK as regards European company law forms. For these matters, reference is made to the "*Notice to stakeholders - Withdrawal of the United Kingdom and EU rules on company law*" (https://ec.europa.eu/info/brexit/brexit-preparedness_en).

2009/38/EC defines as a “Community-scale undertaking” any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States”. A “Community-scale group of undertakings” designates a group of undertakings with the following characteristics:

- at least 1 000 employees within the Member States,
- at least two group undertakings in different Member States,

and

- at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State

As of the withdrawal date, for the purpose of determining whether there is a Community-scale undertaking or a Community-scale group of undertakings to which Directive 2009/38/EC applies, the United Kingdom will no longer be counted as a Member State and employees in the United Kingdom will no longer count as employees within the Member States. This may also impact the duty on the part of the central management to initiate negotiations for the establishment of a European Works Council or an information and consultation procedure which presupposes a written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States (Article 5(1) of Directive 2009/38/EC). Similarly, the withdrawal of the United Kingdom may be decisive for:

- the law applicable in order to determine whether an undertaking is “a controlling undertaking” (Article 3(6) of Directive 2009/38/EC);
- the central management’s representative that needs to take over the responsibilities referred to in Article 4(1) Directive 2009/38/EC if the central management is not situated in a Member State (Article 4(2) of Directive 2009/38/EC);
- the members of the special negotiating body to be elected or appointed in proportion to the number of employees employed in each Member State by the Community-scale undertaking or Community-scale group of undertakings, by allocating in respect of each Member State one seat per portion of employees employed in that Member State amounting to 10 %, or a fraction thereof, of the number of employees employed in all the Member States taken together (Article 5(1)(b) of Directive 2009/38/EC).

According to Article 6 of Directive 2009/38/EC, the setting up and functioning of European Works Councils rely on an agreement negotiated at company level by the social partners. These agreements should take the abovementioned consequences into account.

The website of the Commission on labour law (<http://ec.europa.eu/social/main.jsp?catId=157>) provides general information concerning the field of information and consultation of workers at transnational level. These pages will be updated with further information, where necessary.

European Commission
Directorate-General Employment, Social Affairs and Inclusion