NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES ON EUROPEAN WORKS COUNCILS

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 as from 30 March 2019, 00:00h (CET) ('the withdrawal date'), the United Kingdom will be a 'third country'.

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

In view of the uncertainties surrounding the ratification of the Withdrawal Agreement, all interested parties, and especially economic operators, are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.

Subject to the transition period provided for in the 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, will no longer apply to the United Kingdom. This has in particular the following consequences:

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1 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.

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


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
1. **Thresholds for Applying Directive 2009/38/EC**

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 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.

As a consequence, should the relevant thresholds no longer be met due to the United Kingdom’s withdrawal, a European Works Council, even if already established, will no longer be subject to the rights and obligations stemming from the application of Directive 2009/38/EC. That works council may continue to function under the relevant national law, but not as a European Works Council within the meaning of Directive 2009/38/EC.

Since Directive 2009/38/EC allows for the participation of representatives from third countries in European Works Councils, representatives from the United Kingdom will be able to take part in European Works Councils, where the relevant agreement referred to in Article 6 of Directive 2009/38/EC so provides.

The withdrawal of the United Kingdom 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).

2. **Location Requirements for Central Management/Central Management’s Representative**

According to Article 4(1),(2) of Directive 2009/38/EC, the central management or the central management’s representative agent have to be situated in the EU. Therefore, as of

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6 See Article 1(6) read in conjunction with Article 6(2)(a) of Directive 2009/38/EC.

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).
the withdrawal date, for those European Works Councils for which the thresholds in Article 2 of Directive 2009/38/EC continue to be met and which have their central management or their representative agent in the United Kingdom, the role of central management will be transferred to a Member State. For such European Works Councils, unless they designate a new representative agent in a Member State, this role will be assumed by 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. This responsibility is transferred automatically and immediately as of the withdrawal date.

3. **Applicable Law to the Agreement referred to in Article 6 of Directive 2009/38/EC**

The law applicable to the agreement referred to in Article 6 of Directive 2009/38/EC is that of the Member State where the central management or the ‘deemed central management’ or the central management’s representative agent are situated in the EU.

Where the law of the United Kingdom has applied to an existing European Works Council, as of the withdrawal date the law of a remaining Member State will apply automatically and immediately to ensure that the rights of employees under Directive 2009/38/EC remain enforceable within the Union.

While it is thus not necessary from a legal point of view to amend agreements referring to the legislation of the United Kingdom to remain in conformity with Directive 2009/38/EC, it is highly recommended to amend such agreements and stipulate explicitly the law of a Member State for the sake of clarity and legal certainty (see below, section 5 of this notice).

4. **Other Aspects**

The withdrawal of the United Kingdom may also 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 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(2)(b) of Directive 2009/38/EC).

5. **Agreements in accordance with Article 6 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.
Article 13 of Directive 2009/38/EC provides for a procedure for amending the agreement. The withdrawal of the United Kingdom may lead to a significant change of the structure of a ‘Community-scale undertaking’ or a ‘Community-scale group of undertakings’ in the sense of this provision.

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