

# **BREXIT and the continued application of UK EWC law in the event of 'No Deal' or the EWC Directive is no longer applicable to the UK**

## **THIS ADVICE ONLY APPLIES TO COMPANIES THAT HAVE EWC'S CURRENTLY UNDER UK LAW**

**Executive summary: Based on the below advice IT IS EXTREMELY IMPORTANT that EWC agreements are NOT amended to reflect BREXIT.**

### **European Commission guidance**

The European Commission has issued guidance in relation to the UK and the EWC Directive in the event of a 'no deal' scenario or the EWC directive is no longer applicable to the UK .

They have stated that:

*'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.'*

They have further stated that:

*As of 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.***

In essence the European Commission has stated the following '*as of the withdrawal date*':

1. UK employees will no longer be covered by the EWC Directive;
2. Undertakings which have '*central management*' or their '*representatives agent*' in the UK, will need to nominate a '*representative agent*' in another Member State;
3. Failure to nominate an alternative '*representative agent*' will result in the EWC being governed by the law of the Member State where the undertaking has the highest number of employees.

### **UK government guidance**

In conflict with the advice provided for by the European Commission, the UK Government has already amended the UK EWC legislation (Transnational Information and Consultation of Employees Regulations 2010 (as amended)), which will come into effect *'as of the withdrawal date.'*

It states that the UK regulations will continue to apply to:

*'A European Works Council or information and consultation procedure [that] has been established **before exit day** under regulation 17 [a negotiated agreement]; or a European Works Council has been established before exit day by virtue of regulation 18 [Subsidiary Requirements].'*

Other sections of the UK regulations have been deleted, such as those that allow future EWC's to be established under UK law. In essence the UK Government has legislated to ensure that as of *'as of the withdrawal date'* **companies that have an EWC under UK law will be legally required to continue to apply the UK regulations to the operation of that EWC.**

### **What does this mean in practice?**

The advice from the European Commission and the legislative measures undertaken by the UK Government means the following in practice:

*'As of the withdrawal date'* any company that has an agreement under UK Law will:

1. Be required to transfer the role of central management to an alternative Member State.
  - There will be no legal obligation to continue to apply the EWC agreement to UK employees
2. Continue to apply the UK EWC regulations to their existing EWC agreement.
  - UK employee will continue to be covered by this agreement.

In principle the above means that any company that has an agreement under UK Law *'as of the withdrawal date'* will have 2 options:

#### **Option 1** -Operate **TWO EWC's**,

- **ONE EWC** which does not cover UK employees and is subject to an alternative Member State's legislation and
- **ONE EWC** that covers UK employees and which is subject to UK legislation or

**Option 2** – Operate only **ONE EWC** which remains with its same terms, but which is subject to **TWO different jurisdictions.**

Unite would be in agreement with a proposal for the company to continue with **ONE EWC** with the same terms but subject to **TWO different jurisdictions** (UK and an alternative Member State) with UK employees continued participation and coverage.

Unite would not be in agreement to change the jurisdiction of any current EWC agreement solely to an alternative Member State, as UK employees would automatically then lose their rights.

**IMPORTANT: Unite cannot oppose if a Company issues notice that they intent to move their agreement to an alternative Member State, as they are required to as instructed by the European Commission, however, IT IS EXTREMELY IMPORTANT that the EWC agreement is NOT amended to reflect this.**