

Replacement and Opting Into EU funds post-Brexit

Policy Development

To finalise key negotiating principles around the replacement of EU funding and the possibility of opting into some EU cooperation programmes, once the UK has withdrawn from the EU.

Summary and Recommendations

This paper invites Leaders to agree the key negotiating principles, the detail of which was worked up by the Environment and Economy Board. These will guide COSLA lobbying in the forthcoming discussions to replace EU funds with domestic funding for local sustainable development. The report also considers outstanding issues for current EU programmes and the impact of the European Union (Withdrawal) Bill. Finally, it seeks views on wider post-Brexit issues, such as what might happen post-Common Agricultural Policy and possible avenues to opt into some EU cooperation programmes.

Leaders are invited to:

- i. Note that the Environment and Economy Board has discussed the issues in this paper in some detail;
- ii. Agree that COSLA officers work with Local Government officers and Scottish and UK government officials to seek to ensure that the spend of remaining funds in the existing EU funding programme is optimised;
- iii. Agree the key principles for Local Government lobbying on forthcoming consultations and for the closure of existing EU funding programmes and their eventual replacement by domestic funding arrangements; and
- iv. Agree the key principles for discussions with Scottish, UK and EU institutions on the possible opt into some EU cooperation programmes open to local authorities.

References

Previous reports on EU funding and EU withdrawal:

- Environment and Economy Board October 2017 - UK's Exit from the European Union
- COSLA Leaders October 2017 - UK Withdrawal from the European Union – Governance and Update
- COSLA Leaders August 2017 – UK Withdrawal from the European Union
- COSLA Leaders February 2017 – Brexit Update and Mandate

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UK's Exit from the European Union

Policy Development

1. To agree key negotiating principles around the replacement of EU funding and the possibility of opting into some EU cooperation programmes, once the UK has withdrawn from the EU.

Current Position

2. In the current 2014-20 programme, Scotland has been allocated €1.8bn in EU Structural Funds for Regional, Rural, Social and Marine economic development. Around one third is currently delivered by the Local Government sector, including Business Gateway and Community Planning Partnerships.
3. While the UK Treasury and the Scottish Government have agreed by way of several public statements in late 2016 that they would honour existing commitments until the end of the current programme in 2020, it is necessary to ensure that those commitments are actually realised and to start working now on EU funding's replacement.
4. COSLA's position is that post-Brexit we will continue to need funding mechanisms for locally led, sustainable economic development. Any new UK and Scottish mechanisms should retain the positive features of the EU Structural Funds, that is: be strategic, partnership based, bottom up and have certainty beyond the term of a single Parliament.
5. We have had initial officer-level discussions at UK and Scottish Government levels. However, the delay in Brexit negotiations starting, the running of existing programmes, and the elections have prevented civil servants (except in the Rural Development sector) working meaningfully on this. Positively, all main political Manifestos, including the Conservative's proposal for a Shared Prosperity Fund, suggest replacing EU funding and civil servants seem to be open to our early contribution. We expect the UK Government to consult formally on this later in the autumn. However, there are as yet no firm guarantees of how much funding might be available through whatever mechanism is ultimately agreed.
6. We also want to see Scottish councils being able to opt into some EU programmes post-Brexit (Treasury paying for the UK share) in the same way that Norwegian and Icelandic municipalities do. This has already been welcomed at EU level, with UK Government also seeming open to considering it.

Closure of Ongoing EU Funding Programmes

7. Of the full quantum above, Scottish Local Government delivers around one third of the £1.3bn EU Structural Funds 2014-20 specifically aimed at regional development and social issues (European Regional Development Fund (ERDF), and European Social Fund (ESF)).
8. This essentially means funds for Small Medium Enterprise (SME) support delivered by Business Gateway, financial engineering via the new "Business Loans Scotland" (an all-Scotland local authority loan partnership), employability via Community Planning Partnerships, and special funds on Youth Employment for 12 West of Scotland councils (due to the 25% youth unemployment rate there at the time it was allocated). All these

schemes are run by the Scottish Government Structural Funds Division. This total also includes the £86m schemes that councils deliver on behalf of the Scottish Government Rural Division: the LEADER programme for rural communities' diversification, the small business support scheme and rural broadband; as well as about £6m for coastal communities run by Marine Scotland.

9. These allocations are dwarfed by the much larger amounts of €4.5bn directly allocated to the farming sector via the CAP Pillar I, as well as the non-local, remaining 93% of the Scottish Rural Development Programme and a similar amount of the above-mentioned fisheries fund going to the fishing industry.
10. The start of the current programmes suffered a number of delays, including IT issues, meaning that three years into the programming period, few funds have been claimed from the EU. Claims will now likely be made around so-called "Brexit day" (30 March 2019). Both the UK Treasury and Scottish Government have issued formal statements reassuring beneficiaries on the spending of the current funding regardless of the Brexit date.
11. Under EU Regulations the EU monies committed for 2020 (the last year of the current EU budget period) could still be claimed for refund in 2023. This is known as the N+3 rule. However, other than the above statements from HM Treasury and Scottish Ministers there is no binding guarantee at present (pending any announcement in the Autumn Budgets) that the Scottish and UK Government will continue applying the same legally binding rules EU Structural Funds Regulations, including N+3 post withdrawal.
12. The easiest solution is that this political guarantee is made legally binding by explicitly mentioning the EU Structural Fund Regulations in the European Union (Withdrawal) Bill or as part of the related upcoming Brexit legislation. This is what we are calling for.
13. At the last Leaders meeting, and in other discussions with councils, concerns have been raised that, due to the delays in launching the programmes (a knock on effect from the prior delay in getting the EU budget agreed) and the general uncertainty around Brexit, some Councils might now have difficulty in delivering their committed interventions and making match funding available. This is why securing full legal certainty over remaining monies and the spending and reporting obligations post-Withdrawal is so important.
14. In addition to recent meetings with Department for Exiting the EU (DExEU) Ministers and Mr Russell and our work on the Withdrawal Bill, we are raising these concerns with UK and Scottish civil servants and also by way of a range of oral and written submissions to both UK and Scottish Parliament enquiries on the Withdrawal Bill. As with the replacement of EU Structural Funds (discussed below), COSLA will seek early discussions with the Cabinet Secretary for the Economy, Jobs and Fair Work and Cabinet Secretary for Finance and Constitution to ensure that as much certainty as possible is provided.
15. Further, a session has been arranged by SLAED (Heads of Economic Development) later in November where we will discuss these issues in some detail with Scottish Government civil servants. Leaders will be kept advised of developments.

New Post-Brexit Multi-Annual Integrated Sustainable Local Development Programme

16. While we recognise that, post-Withdrawal, economic development funds will be discretionary, preparations should start now so policy and funding arrangements are in place to replace Structural Funds by the time of leaving the EU.

17. So while we welcome the UK Industrial Strategy, it is mainly thematic or sector based rather than spatially targeted by default. COSLA seeks a strong and sustainable Industrial and Regional Development Strategy supported by a funding programme that is strategic, partnership based and has legal and funding certainty beyond a single parliament.
18. The UK Conservative Manifesto proposed a Shared Prosperity Fund, “taken from money coming back to the UK as we leave the EU, to reduce inequalities between communities across our four nations.” Although initial discussions with civil servants before the summer showed that work had not started, they were keen to emulate previous EU funding partnership arrangements with Devolved and Local Government representatives. The Manifesto and UK Government Brexit White Papers specifically foresee consultation with Local Government and devolution to the local level. DExEU Ministers meeting the COSLA President recently, confirmed that they would be keen to hear how best Regional Policy might be furthered through the Shared Prosperity Fund. We would be keen to develop a central-local, multi-annual, sustainable economic development programme, which consolidates the scope and resources currently disbursed by the several existing EU funds (the “single pot” approach). This single pot would have a strategic nature so that, with shared accountability, central and local authorities would agree to work towards shared outcomes.
19. At the same time this new funding instrument would be able to do away with EU imposed “earmarks” (such as the compulsory earmark of 20% for research, or the expectation of spending only 5% of rural funds in village renewal and economic diversification). It would not need to replicate the same match-funding rates currently set by EU rules and, in some cases, even do away with those match funding obligations altogether.
20. The principle of additionality should be retained. This means that spending priorities should focus on medium term priorities (eg employability, broadband) that need to be locally determined but refer to wider national and international priorities. Allocations for this funding replacement should be left outside the Barnett formula.
21. In terms of broad spending priorities it seems pertinent that the new funding is used to localise the UN Sustainable Development Goals (SDGs) that both the UK and Scottish Government signed up to in September 2015, but have so far not actively engaged on with Local Government, in spite of COSLA and others’ role in drafting them. By contrast, central-local partnership work on the SDGs has already started in many European and other countries.
22. Development of new replacement funding needs to go hand in hand with simplification and consolidation of the diverse State Aid rules for Regional, General Block Exemption and separate EU state aid guidelines for broadband, research, environmental, *de minimis* and Services of General Economic Interest. However the extent of this consolidation and simplification exercise will depend on the scope and depth of the future UK-EU Partnership and Free Trade Agreement (whose negotiations have not yet started).
23. Existing powers for Scottish Programmes should be decided by the Scottish Government, Local Government and other partners as at present. UK-wide arrangements for governance, reporting and audit of the new fund should replicate the light touch, partnership based arrangements between the UK, Devolved Administrations and Local Government outlined in the current UK Partnership Agreement.

24. Lastly, there should not be separate audit and reporting trails and obligations as currently happens with EU funds as all these requirements should be mainstreamed through existing national audit and reporting systems.
25. Though we have had early discussions with UK and Scottish civil servants we are keen now to contribute to the proposed consultation on the UK Shared Prosperity Fund and start early scoping with the Scottish Government and, where appropriate with the Department for Business, Energy and Industrial Strategy (BEIS) and the Department for Environment, Food and Rural Affairs (DEFRA), so that the features of the new programmes are finalised well before the closure of the current EU funds allocations.

Rural Economy and Funding post-Brexit

26. Rural Scotland and the fishing and farming sectors are one of the most affected by EU rules and funds. The rural economy is heavily dependent on the existing EU Common Agricultural Policy. In that respect, the new DEFRA Secretary of State outlined in June that, in developing post-Brexit domestic funding, support to rural areas of the UK would not need to be tied into Common Agricultural Policy (CAP) earmarks and constraints, which historically have penalised the UK and most particularly Scotland. The Scottish Government is concerned that only certain types of farms will be included and possibly no replacement fund will be available for wider rural development. The UK Government wants the new domestic schemes to be in place by 1 April 2019 and CAP not to be part of any transition period with the EU.
27. This seems a good opportunity to increase the existing 5% compulsory rural spending earmark for local development. Equally, with the EU regulations gone, there is no reason why Local Action Groups could not be aligned with local authorities in line with community empowerment legislation.
28. The Cabinet Secretary, Fergus Ewing, has engaged with stakeholders, including some Local Government representatives. He also wrote to the previous COSLA Spokesperson seeking views and offering to engage, and on 30 October he met with Cllr Heddle.
29. A National Council of Rural Advisers has been created. Co-chaired by Lorne Crerar (Highlands and Islands Enterprise) and Alison Milne (Scottish Tenants Association), it does not have a specific Local Government representative. However, COSLA's input has already been actively sought. It is currently scoping the issues that need to be covered for EU funding replacement and the wider rural economy (with a report due around now). This will complement the broader work being carried out by the Agricultural Strategy Champions and that of the Rural Parliament.
30. COSLA is keen to enter into detailed early discussions with the Scottish Government and DEFRA, to seek the opportunity to build a new dedicated Scottish Rural Community Empowerment Fund that can become the cornerstone of local authority local economic development in rural areas. However we also need a wider discussion with them on the future of our rural communities from an environmental, depopulation, socio-economic and community empowerment perspective.

UK Opting into post-Withdrawal EU Cooperation Programmes

31. Scottish councils currently have access to much smaller pots of funding by applying to interregional funds (INTERREG) or a variety of other EU funds. These are subject to forming partnerships with partners from other EU countries and competitive EU-wide project calls. In the last period, the Scottish draw down was roughly £35m for cross-border with Ireland, North Sea, Atlantic, Arctic and pan-EU interregional cooperation

projects. On top of that, through Horizon and Erasmus+ programmes, councils have received amounts in the region of £1m in recent years.

32. We have already had contact with UK civil servants on this, and it was raised with DExEU Ministers by the COSLA President (as it was raised with their predecessor) and also with David Mundell, Secretary of State for Scotland at a recent meeting.
33. Having sought views from Scottish local authority practitioners, and with the help of our peers from Norway and Iceland, we have identified a possible way for UK local and other public and civil society bodies to opt into a range of EU cooperation programmes – with the UK Treasury covering their part.
34. Several UK Brexit White Papers, Ministerial statements and Treasury statements have left the option open of further participation in some EU programmes (namely Research and Erasmus EU funds) but these don't cover Territorial Cooperation (INTERREG) or other policy specific cooperation programmes currently open to local authorities of non-EU countries such as COSME (for SMEs), EASI (Employment and Social Innovation), Consumer and Citizenship programmes.
35. However, 'The White Paper on Exiting the EU' opens the door. *"Once we have left the EU...there may be European programmes in which we might want to participate. If so it is reasonable that we should make an appropriate contribution"*. This possibility has been reinforced by the UK formally proposing to opt into the Horizon EU research programme. The basic funding rules are common to all EU programmes, making it possible for the UK to opt into other programmes as well. For instance, in the case of INTERREG this would amount to £175m per year (the average net contribution to the EU budget is currently €7bn/year). At COSLA's request, the European Commission and the Committee of the Regions have specifically backed this "subject to the UK Government asking for it" during the negotiations.
36. It should be noted that exemption from European Court of Justice jurisdiction is an essential requirement for participation to be acceptable for the UK Government. In that regard we have received confirmation that participation of municipalities from Norway or Iceland in EU programmes is not subject to ECJ jurisdiction, not even that of the EFTA Court. Any dispute would be settled in the Joint Committee made up by these countries and the EU – presumably a similar structure that will govern the future UK-EU Free Trade Agreement as outlined in the UK Government "Enforcement and dispute resolution - a future partnership paper" published in August.
37. On INTERREG, the Member State as well as Norway and Iceland will jointly bear the financial consequences, whereby each Member State (or Norway/Iceland) shall be responsible in proportion to the ERDF/Norwegian/Icelandic contribution of the respective national project partners involved. The co-financing rate would be 50% and it would be the Scottish Government solely responsible for audit and control, not the EU.
38. When the Presidential team met Mr Barnier, Chief EU Negotiator, he specifically committed to look with the UK negotiators at options to enable the UK to opt into these cooperation programmes so that councils could continue participating. Building on a range of exchanges with UK and Scottish civil servants, COSLA officers seek the mandate to, with the support of councils and professional networks, open formal negotiations with the UK Government on opting in to some European Cooperation programmes post-Brexit.

Next Steps

39. As set out above, the proposed negotiation lines on EU funding closure, replacement of EU funds, including rural funding and opting into some EU cooperation programmes post-Brexit will be progressed by COSLA at political and officer level in the coming months by way of formal consultations and bilateral meetings. We will report as soon as significant progress has been made on these issues.

Summary and Recommendations

40. This paper invites Leaders to agree the key negotiating principles that should guide COSLA lobbying in the forthcoming discussions to replace EU funds with domestic funding for local sustainable development. In so doing, it considers outstanding issues for current EU programmes and the impact of the European Union (Withdrawal) Bill. It also sets our priorities on wider post-Brexit issues, such as what might happen post-Common Agricultural Policy and possible avenues to opt into some EU cooperation programmes.
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