

**UK's Exit from the European Union:
Policy, Funding and International Engagement after Exit**

Policy Development

The last few weeks have seen developments in the withdrawal process and in the UK-Devolved negotiations on the apportionment of EU returned powers. This report provides information on these developments and continues a discussion on Local Government's relationship with international partners once the UK has left the European Union.

Summary and Recommendations

This paper provides an assessment of the recent UK-EU withdrawal agreements on the issues that are part of the remit of this Board and, building on the discussion from last December provides a scope of the future engagement opportunities post Brexit.

The Board is invited to:

- i. Note the update on the UK-EU withdrawal process and on environmental policy and legislation;
- ii. Discuss whether there are other issues which member wish to raise to COSLA's attention in our work on the UK's exit; and
- iii. Discuss whether there is support for developing a shared local government strategy for engagement with voluntary international commitments such as the Covenant of Mayor, Under2 MoU, Bonn Registry, NAZCA Platform as well as international bodies dealing with sustainable economic development.

References

Previous reports:

- International Sustainable Development – December 2018
- UK Withdrawal from the European Union – Leaders August 2017

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Policy Development

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COSLA Position

2. While COSLA had agreed to support remain in the EU we accept the outcome of the vote and have been working with the Scottish and UK Governments our peers from the rest of the UK and other Member States and the EU institutions to ensure that the impact is minimised in our communities, the powers of local governments are respected and if possible enhanced, and the funding and policy and political cooperation arrangements are maintained or replaced. Most recently and, informed by a discussion at this Board, COSLA agreed principles for lobbying on replacing EU funds with domestic funding. This was agreed by Leaders in November 2017.
3. This report provides the Board with an up-to-date picture on the UK's withdrawal from the European Union and its implication for environmental policy and future funding. This report also discusses the implication of the UK's withdrawal to the various international sustainability agreements and organisations to which Scottish Local Government currently relate. This follows on from an earlier report to the Board on December 2017.

What is Changing?

4. Over the last few weeks there have been a number of UK-EU Agreements in the Withdrawal Process. There have been developments in the UK-Devolved negotiations on apportionment of EU returned powers. During the month of March significant agreements have been reached in terms of the Withdrawal Treaty that covers also the transition period April 2019 and December 2019. Both the UK and the EU negotiators have also last month outlined their aims for the forthcoming negotiation of the post Brexit UK-EU Free Trade and Partnership Agreement. From that perspective, it is now possible to scope the possible implications for Councils powers on environmental, sustainable development and economic development policy.
5. The draft Withdrawal Agreement which is already agreed by about 60% makes clear that existing EU legislation, obligations, reporting, court jurisdictions and funds will operate as at present until December 2020. This has implications for the Withdrawal Bill, repatriation and apportionment of EU powers, transposition of EU funds discussed below.
6. As for the post Brexit UK-EU Free Trade Agreement that will soon start to be negotiated the UK Government is keen to stress that it has among the highest environmental and animal welfare standards in the world and is keen that as the UK leaves the EU "EU we will uphold environmental standards and go further to protect our shared natural heritage. And I fully expect that our standards will remain at least as high as the EU's."

7. By contrast the EU has agreed that given the UK's "geographic proximity and economic interdependence with the EU27, the future relationship will only deliver in a mutually satisfactory way if it includes robust guarantees which ensure a level playing field. The aim should be to prevent unfair competitive advantage that the UK could enjoy through undercutting of current levels of protection with respect to competition and state aid, tax, social, environment and regulatory measures and practices. This will require a combination of substantive rules aligned with EU and international standards, adequate mechanisms to ensure effective implementation domestically, enforcement and dispute settlement mechanisms in the agreement".
8. In other words, as the UK will cease to be an EU Member State but is keen to ensure that by 2021 a UK-EU Free Trade and Partnership Agreement so it cannot radically depart from the current legislative framework. The existing EU targets and reporting on for instance Emissions Trading or Renewables, Waste will cease to be binding in the UK. However, an extensive agreement that will cover goods (including food and drink) and, possibly, some services, will require a broad alignment on shared outcomes but it will be up for the UK to decide to deliver those. A favourable condition is that the UK and the EU have both signed the United Nations Sustainable Development Goals (discussed below) that can provide a platform for UK-EU common ambition in the medium term.
9. In the short term (2019-2020 and in the earlier part of the next decade) under the terms of the future European Union (Withdrawal) Act the existing EU environmental directives, state aid rules will remain in force. The UK has also confirmed that all EU legislation agreed before the date of Withdrawal end March 2019 will be transposed into domestic law. Some of them on Energy Efficiency and Circular Economy are discussed in this paper.
10. However, there are a few things that need to be resolved:
 - i. Reciprocity issues: some EU legislation in order to be enforceable needs to be replicated in both the UK and the EU. This concerns, for instance, waste shipments (which is crucial for some local authority's waste plans), shipments of Waste, Emissions Trading, Services Directive. So far only the issue of energy links is clearly in the UK-EU negotiation agenda.
 - ii. Reporting obligations: currently Local Authorities are subject to specific reporting obligations to meet various EU Directives. Often these double up existing domestic reporting duties and require re-engineer existing information just to comply with these EU directives. At this stage it is not clear what will happen with these reporting obligations particularly post Transition period.
 - iii. Environmental Justice: most of enforcement of EU environmental legislation is done by way of the supervisory powers on the European Commission and the European Court of Justice. The UK is at present time about to be brought again by the Commission (alongside other seven Member States to the European Court of Justice for lack of compliance at local level across the UK to EU Air Quality Legislation. Under the terms of the Localism Act 2011 any infringement fine will be passed on to the concerned Councils. The UK Government has already indicated that post Withdrawal these environmental justice powers will be recreated within the UK.
 - iv. EU Guidance: many EU rules are soft law or guidance. These are not included in the Withdrawal Bill (or the Continuity Acts). While they will remain in force during the transition period (and about to the EU Structural Funds for the duration of the

programme end 2023) the status of others such as the State Aid Guidelines depend on the post Brexit UK-EU Trade deal. The EU position is to keep all the rules.

- v. Local and Devolution issues: the UK and Devolved governments are currently negotiating how to apportion EU returned powers including the need to establish UK-wide common frameworks. This raises the issues that new UK bodies to deal, for instance, with state aid subsidies. There is concern that the UK Government would be both a judge and beneficiary of decisions made. Amid intergovernmental tension there is slow progress to reach a consensus between the 111 and 153 lists of powers returned from the EU. However, COSLA initial assessment so far finds that 64 out of these powers concern local Government. 18 of those have, 16 of a medium impact and 36 a lower impact. However, the picture is even more complex that regardless the likelihood of some of these powers to change it will now require a degree of discussion and negotiation between Local Government, Scottish and UK Government that is unprecedented in the Scottish local and devolved experience. For this reason, it is welcome the UK Government announcement (following COSLA and our UK counterparts' lobby) to create a consultative mechanism between the UK and Local Government to deal with Brexit. However, this needs to be replicated at Scottish level and extended for post Brexit free trade and other international negotiations that (following the precedent of the US-EU Trade negotiations TTIP will concern local government powers).

Outstanding EU legislative and funding issues

11. One of the most important issues of the Withdrawal Agreement agreed so far is the legal safeguard that the current EU funding programmes, namely the EU Structural Funds, will be able to be managed, delivered, audited and reported as at present until its natural end in 2023. This provides a legally binding assurance that neither the Withdrawal Bill nor successive Treasury and Scottish Government statement were able to provide and is a welcome reassurance to managing, delivery bodies and beneficiaries. There are, however, no new developments on the issue of replacement of EU funds. We understand that no Ministerial discussion has been held on the UK Shared Prosperity Fund and equivalent (there are more specifics on rural issues particularly on farm funding) and that any consultation would be towards the end of the year. We have, nonetheless, contributed to a number of Parliamentary inquiries over this issue, the latest one by the Scottish Parliament Finance and Constitution Committee – on the basis of the existing outline positions agreed by this Board and the November Leaders meeting.
12. A key issue that neither the UK nor the EU has as yet explicitly agreed to in the negotiations is the value of an opt in to European Territorial Cooperation (INTERREG), as opposed to positive statements by both side to UK participation in the EU research and education programmes (Erasmus) we are working with partner across the UK and in Brussels and persuading UK ministers to add this into their negotiation list – as from the EU side both Mr Barnier and the EU Regional Commissioner have explicitly told us that they would be happy for continued participation in INTERREG – if the UK requests it.
13. The COSLA EU team has also been busy dealing with the outstanding EU legislative pieces of legislation that under the terms of the Withdrawal Bill will be transposed into the UK. Indeed, they review several pieces of EU legislation that are among the most relevant for Councils and which were agreed since December: the Energy Performance in Buildings Directive (EPBD), the Renewables Directive (RES), the Energy Efficiency Directive (EED) and the new Energy Governance. It is positive that in working with our peers we managed to resist the ambition to set specific energy targets for Councils and to introduce a legal obligation to consult Councils in making future National Energy Plans.

14. Another major dossier that has been recently agreed is the Circular Economy Package including a review the Waste Framework Directive , the Electric Waste (WEEE) Directive, Packaging Waste among others. We were involved in this review since it started around 2012 but in the end the Commission proposed targets below existing levels of Scottish ambition. In the deal reached last December it was agreed that the recycling rate of municipal waste should be 55% by 2025, 55% by 2030 and 65% by 2035. A Landfill ban for 2030 has been agreed (with exceptions for remote and isolated areas). While all is within the level of Scottish policy aims they are entirely binding (as opposed to parts of the Zero Waste Plans) so technical issues such as definitions and reporting obligations need to be carefully looked at during the transposition which will be unaffected by Brexit.
15. Last but not least there are other new major proposals such as last November's Clean Mobility Package (including new obligations for clean vehicles public procurement and alternative fuels) and the Plastic Strategy tabled last January that will not become law in time for Withdrawal. However, the UK has specifically indicated that it will seek to align to the broad outcomes of these proposals as well.

International engagement post Brexit

16. As the UK will leave the EU but it will aim to establish a broad alignment with the EU – most certainly in terms of state aid and procurement but also in a looser way on other issues such as environmental matters. It is unclear which structures will take form to ensure this broad alignment but this could be achieved by way of a Joint Committee between both the UK Government and the European Commission. Other arrangements are possible, such as participating in EU agencies, interparliamentary and local government political dialogue. This is under discussion and COSLA is lobbying to ensure that continued political cooperation with our European partners.
17. More widely there is scope for a partnership based approach in Scottish, and indeed UK, international representation, at these post Brexit UK-EU arrangements. This could also be extended to beyond the EU to United Nations and other international organisations, for example the Council of Europe, the OECD United Nations Climate Conference (UNFCCC) and UN agencies dealing with local government: UN HABITAT and United Nations Development Programme (UNDP), United Nations Advisory Committee of Local Authorities (UNACLA). Many agreements reached in these fora end up being adopted as national policy.
18. It seems pertinent that COSLA and our UK sister organisations can input on the UK position ahead of UNACLA, UN-HABITAT, UNFCCC meetings and not just rely on the indirect input via our umbrella UCLG. COSLA manages to actively contribute to the drafting international deals thanks to our umbrellas CEMR and UCLG (as they are invited as advisors to some international negotiations). It was through them that COSLA could help in the drafting of the United Nations Sustainable Development Goals (SDGs) agreed in September 2015 and on the UN HABITAT III Sustainable Urban Agreement in 2016.
19. There are other non-EU European bodies that deal with local economic development were we could increase our presence, namely the OECD and the Council of Europe. The OECD LEED Forum on Partnerships and Local Development (FPLD) is the OECD's network of practitioners in the fields of economic development, employment, skills and social inclusion. COSLA has a standing invitation from the OECD to join this forum and previous links with the UK Mission there. We should aim to be able to input into the UK contributions to the OECD Roundtable of Mayors and Ministers and the OECD Regional Governance Policy Committee. It is important to know that the future Scottish Rural Policy will be based on an forthcoming OECD Review, just as the Schools reform Agenda was based on a OECD report. Similarly, UK civil servants participate in the Council of Europe Council of

Europe European Committee on Democracy and Governance (CDDG) where issues such as local finance are discussed – without no linkage being sought with the Council of Europe Congress of Local and Regional when for instance our lead member Cllr McVey is draftsman in a pan-European report on local finance and coping with debt.

International Voluntary Local Government Commitments

20. In addition to the above formal international obligations, Scottish Councils can, and some already do, participate in international sustainability commitments both on their own as well as collectively.
21. The Global Covenant of Mayors for Climate and Energy was previously the EU's key mechanism to involve individual regional and local government in international sustainable development commitments. It has now also a combined UN initiative (hence there is potential post Brexit) it is also an official UN data provider so by joining Councils are linked to UN reporting structures. There are currently five Scottish Councils which are full Covenant members – Fife and Dundee recently joined- with COSLA acting as the official supporting organisation in Scotland. COSLA supports the Covenant of Mayors because the framework supports local leadership, decision making and multi-level governance. It also allows for the exchange of good practice at sub-national level, in Europe and globally. There is one third of Scottish Councils looking to follow the Covenant of Mayors methodology and produce a Sustainable Energy and Action Plan (SECAP), however they lack resource and capacity (staff, know-how and data) to meet all requirements including the technical baseline assessment of local emissions. Our discussion with Councils and experts that have already done so suggest that cost per Council of developing the baseline work significantly decreases the more Councils cooperate. The feedback we receive is that the Covenant having reached a given critical mass in Scotland and due to Brexit there is need to raise an specific discussion at a political level on this including the need to identify the resources that can be provided so that all interested Scottish Councils can contribute by way of their SECAPs to the United Nations sustainability ambition.
22. There are additional ways for Scottish Councils to demonstrate their commitment to Paris by data reporting to the UN Climate agreements (UNFCCC). The Bonn Carbon Registry is a mechanism for cities and local governments to make specific commitments to tackle climate change. It is the global reporting platform for cities, towns and regions tackling climate change. The NAZCA Platform is another UN initiative that Scottish Councils can decide to participate to provide the UN with initiatives that they are doing on climate adaptation, mitigation and sustainable development initiatives taking place at local level. All Scottish Councils can participate in these platforms.
23. At the Bonn Climate Summit Roseanna Cunningham confirmed that in addition to Scottish Government, the seven Scottish cities will sign the “Under2 MOU” (Memorandum of Understanding). It appears that rather than seeking direct membership such as Bristol and Manchester, the actual signatory will be the Scottish Cities Alliance. The Under2 Coalition was created in 2014 mainly by regions, states and Devolved Administrations to give them more influence in international climate discussions. Members commit to emission reductions consistent with a trajectory of 80 to 95% below 1990 levels by 2050 and to cooperate at all levels of government to achieve the Paris Agreement and the more ambitious goal of limiting global warming to 1.5oC. The Under2 Coalition extends to one third of the global economy and reports to the NAZCA Platform. The rest of Scottish Councils can also join if they so wish and it is proposed that consideration is given to this issue as well.

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