

Environment and Economy Board Item 06

**Private and Confidential**

**Brexit Update**

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| **Summary and Recommendations**This paper provides an update on Brexit matters. If circumstances require it, a verbal update will also be provided on COSLA’s general work to prepare for the UK’s Exit from the EU.COSLA is working with the UK and Scottish Government in the withdrawal process from the EU. This has several implications as regard to Local Government powers being affected by EU returned powers, new UK-wide common frameworks and agencies as well as ongoing EU-funded programmes. As the final shape of the UK withdrawal is still unknown, a number of no deal preparations are under way as well as regards to the replacement EU funds. The future UK-EU relationship will also concern the possible opt into EU programmes and more widely the need for Local Government to be involved in shaping any future UK-EU relationship on the matters relevant to Councils. The Board is invited to:1. Note the ongoing developments as regards to UK withdrawal, ongoing and replacement EU funds and UK-wide common frameworks;
2. Agree that COSLA press the UK Treasury and the Scottish Government to continue honouring ongoing EU funded programmes in the event of a no deal scenario;
3. Agree that the replacement of EU funds, new UK-wide common frameworks, agencies and policies should be developed with Local Government and respecting the existing Devolution settlement.
4. Agree that, in reflection of existing agreements between the UK Government and COSLA and our counterparts from the rest of the UK, to press for the UK to work with Local Government concerning the opt into post Brexit EU funds and new relationship with the EU post Brexit.
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| **References**Previous reports**:**

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| * Development , Economy and Sustainability Executive Group February 2017 -Brexit and EU Update
* Leaders November 2017 - Brexit Replacement & Opting Into EU funds
* [Environment and Economy Board April 2018 – UK’s Exit from the European Union](http://www.cosla.gov.uk/sites/default/files/documents/18-04-20_item_08_uks_exit_from_the_european_union_policy_funding_and_international_engagement_after_exit.pdf)
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**Brexit Update**

**Purpose**

1. This paper provides an update on Brexit matters relevant for Local Government.

# Current COSLA Position

1. COSLA is working with the UK and Scottish Government in the withdrawal process from the EU.

# What is changing?

1. Leaving the EU means reproducing a range of regulatory, enforcement and funding instruments that were previously held at EU level. Dealing with these EU returned powers requires in some instances the creation of UK-wide common frameworks to deal with issues that cut across central and Devolved competence.
2. This was the subject of a legal dispute between the European Union (Legal Continuity) (Scotland) Act 2018 and the UK European Union (Withdrawal) Act 2018. While the UK Supreme Court delineated the limits of Devolved and retained competence on EU-returned powers, this ruling is unlikely to eliminate the concerns over the erosion of the current Devolution settlement as a result of the UK retaining powers that are currently dealt with at EU level.
3. This applies not just to legal powers but also policies and EU funds, both ongoing EU programmes and UK replacement of the said EU funds. While the Withdrawal Agreement was negotiated in principle at the last December EU Summit by the UK Government, non-ratification by the UK Parliament of that deal or a modified version of it, means that no deal preparations have been stepped up.

Funding

1. Non-farming Rural Development has been deemed as one of such common frameworks, whereas the Scottish and UK Governments are still working on how to ensure that the UK and Scottish Farming Bills work side by side. It is unclear whether existing Rural Development schemes and particularly Local Development (LEADER) will be replicated post UK Withdrawal and whether it will be a dedicated funding stream or a subset of the UK Shared Prosperity Fund. A number of working groups are looking at this.
2. Similarly, it is becoming increasing evident that that the UK Shared Prosperity Fund will be more centrally managed at UK level than what has been the case with the EU Structural Funds. COSLA has recently helped the Scotland Office organise a number of events across the country. Alongside the concerns over closure of existing EU funds, Local Authority practitioners were of the view that replacement of EU Funds should be an ambitious policy that empowers communities to adapt the new economic scenario post Withdrawal. A UK consultation will only be tabled once there is clarity of a Brexit deal and the attached €40bn bill of outstanding dues to the EU will be paid or not.
3. As COSLA and others indicated in its contribution to the Scottish Parliament inquiry last year, we would be keen that the level of devolution of the post Brexit funding is at least equivalent to the one we currently have with the EU funds.
4. In the event of a deal, the Withdrawal Agreement (concluded by the Prime Minister last December but not agreed by the UK Parliament and still subject of renegotiation) has very detailed provisions that would enable UK authorities to continue managing and receiving the existing 2014-2020 funding streams. If there is no deal, the European Commission tabled last January legislation that would allow existing funding programmes to continue should the UK still agree to continue funding them. The UK Treasury had given a legal assurance to prevent funds being stopped as a result of withdrawal. While this was in the event of a negotiated exit, our understanding is such guarantee would also apply for no deal as well.
5. The Political Declaration (also concluded last December) does include a number of funds that the UK could opt in to, notably research (Horizon Europe) or education (Erasmus). Pointedly it does not include the possibility of an UK opt into European Territorial Cooperation (INTERREG), except as regards to the PEACE cross-border programme in Northern Ireland and Ireland. This is in spite of the fact that the draft INTERREG 2021-2027 Regulation (which COSLA has actively led in drafting), is the only one that explicitly mentions the possibility of an UK opt in.

Regulatory matters

1. On regulatory matters the tendency appears to be for UK-wide bodies that, though formally independent from the UK Government, are in fact a sub-set of the Westminster institutional framework. The UK Government’s draft Environment (Principles and Governance) Bill, published in December 2018, to establish an Office for Environmental Protection, to take up the role post Brexit, currently exercised by the European Commission, and Court of Justice of the European Union, to hold countries, regions and Local Authorities to account. This Office appears not to replicate the UK and Devolved partnership bodies that exist at present to deal with UK-wide EU environmental issues such as the Joint Nature Conservation Committee and the UK Committee on Climate Change. The creation of this office appears to reproduce the same pattern of the UK Competition and Markets Authority (CMA) being designated as the post Brexit state aid regulator. The Scottish Government has also just published a consultation on post Brexit Environmental Governance. It is available online [here](https://consult.gov.scot/environment-forestry/environmental-principles-and-governance).

1. Equally, the UK has committed to continue working with the EU, aligning and where possible going beyond the EU climate and energy ambitions. This is why, in spite of Brexit, the UK is preparing a National Energy and Climate Plan (NECP) which stems from EU Legislation, the Governance of the Energy Union Regulation. COSLA had successfully helped include a provision whereby such plans would be drafted with the input of Local Government. The draft proposal has been released recently and only a passing mention is given to Local Government in general or Scottish Local Government.
2. The leadership of COSLA and the other three local authority associations from the rest of the UK had agreed with the UK Government in a statement to Parliament that dealing with EU returned powers will be done in consultation with Local Government.

# Proposed COSLA Position

1. It is proposed that COSLA continues to seek reassurances from both the Scottish and UK Governments that ongoing EU funding programmes are safeguarded regardless of the shape of UK exit. COSLA will continue to press for Local Government to be consulted in any post Brexit arrangements both domestic and towards the new UK-EU relationship.

# Next Steps

1. A more detailed update will be provided when the shape of the UK Withdrawal is known.

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