

Environment and Economy Board Item 6

**UK’s Exit from the European Union**

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| **Policy Development**To seek views on key negotiating principles around the replacement of EU funding, and opting into some EU cooperation programmes, once the UK has withdrawn from the EU. |

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| **Summary and Recommendations**This paper invites the Board to agree 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 also considers outstanding issues for current EU programmes and the impact of the European Union (Withdrawal) Bill. It also 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. The Board is invited to:1. 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;
2. 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;
3. Refer these decisions to Leaders for their endorsement;
4. Note the potential impact of the European Union (Withdrawal) Bill on matters relevant to this Board; and
5. Note the meeting with Department of Exiting the European Union Ministers on 13 September and further discussions with Scottish and UK civil servants.
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| **References**Previous reports on the EU funding and EU withdrawal:* COSLA Leaders August 2017 – UK Withdrawal from the European Union
* COSLA Leaders February 2017 – Brexit Update and Mandate
* Executive Group February 2017- Brexit and EU update
* Executive Group November 2016 - EU Policy Update
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**UK’s Exit from the European Union**

**Policy Development**

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principles around the replacement of EU funding, and opting into some EU cooperation programmes, once the UK has withdrawn from the EU

**Current Position**

1. Scotland has been allocated €1.8bn in EU Structural Funds for Regional, Rural, Social and Marine economic development. One third is managed by the Local Government sector including Business Gateway and Community Planning Partnerships.
2. 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 start working on its replacement.
3. COSLA’s position is that post-Brexit we will need funding mechanisms for locally led, sustainable economic development. Any new UK and Scottish mechanisms should retain the main features of the EU Structural Funds, ie be strategic, partnership based, bottom up and have certainty beyond the term of a single Parliament.
4. We have had initial officer-level discussions at UK and Scottish Government level; 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 on this. All Manifestos, including the Conservative’s 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 this autumn.
5. We would 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 seeming open to consider it.

**Closure of Ongoing EU Funding Programmes**

1. Scottish Local Government has been allocated to deliver around one third of the £1.3bn EU Structural Funds specifically aimed at regional development and social issues (ERDF, and ESF) coming directly to Scotland between 2014 and 2020.
2. This essentially means funds for SME support delivered by Business Gateway, financial engineering via the new “Business Loans Scotland” all-Scotland local authority loan partnership, employability via Community Planning Partnerships, special funds on Youth Employment for 12 West of Scotland councils (due to the 25% youth unemployment rate there). 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 a very small ‘pot’ of about £6m for coastal communities run by Marine Scotland.
3. 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.
4. 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. Many claims will be now likely be made around so-called “Brexit day” (30 March 2019).
5. Both the UK Treasury and the Scottish Government have issued formal statements reassuring beneficiaries about the continuation of the current funding regardless of the Brexit date. On rural funds, specifically, 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.
6. In our response and other ministerial correspondence and parliamentary evidence, COSLA has made clear that neither ministerial statement amounts to a legally binding commitment. Current EU Regulations are binding law and its 7-year financial and spending priority commitments cannot be overturned by the government of the day.
7. As the correspondence of 19 September from Brexit Minister Michael Russell to the Scottish Parliament states, the EU Funding regulations are only implicitly covered in the European Union (Withdrawal) Bill. COSLA wants the Bill specifically to reference the regulations and the existing EU spending commitments (which could run until 2022, as under EU rules monies can be spent up to two years after committing funds). Equally, we would support the Bill including provisions whereby changes to existing Scottish programmes cannot be done unilaterally by the UK Government.

1. The Bill does not include all substantive EU Guidance and audit and reporting arrangements currently used to manage the funds. While simplification of existing EU rules would be welcome, the Bill, or any secondary legislation to implement it, should introduce instruments whereby UK and Scottish Governments, with the input of the Joint Programme Monitoring Committee (which includes Local Government representatives), specifically agree any changes. We could seek changes such as Simplified Cost Options or multi-fund Integrated Territorial Instruments (a key demand in Highlands and Islands) which the Scottish Government was discouraged from using in light of existing EU rules. This is an opportunity to revisit this, even for this programming period.

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

1. While we recognise that, post-withdrawal, economic development funds will be discretionary, preparations should start now so policy and funding arrangements are in place by the time of withdrawal.
2. 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.
3. 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 Social Prosperity Fund.
4. Ahead of the forthcoming consultation and further contacts with civil servants both in Scotland and at UK level, COSLA’s preferred option is essentially retaining the positive elements of EU funds while being freed from the current constraints of existing EU rules that were designed to be applicable to all Member States and have often been an unnecessary burden on councils.
5. Thus, we would be keen to develop a central-local, multi-annual sustainable economic development programme (providing funding certainty beyond the term of a parliamentary mandate or two consecutive spending review cycles), which consolidates the scope and resources currently disbursed by the several existing EU funds (the single pot approach).
6. This single pot would have a strategic nature so that, with shared accountability, central and local authorities would agree to work towards shared outcomes.
7. 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). Equally 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.
8. The principle of additionality should be retained. This means that spending priorities should focus on medium term priorities (e.g. 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.
9. In terms of broad spending priorities it seems pertinent that the new funding is used to localise the UN Sustainable Development Goals 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 the SDGs. By contrast, central-local partnership work on SDG has already started in many European and other countries.
10. Development of new replacement funding needs to go hand in hand with simplification and consolidation of the diverse Regional State Aid, 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).
11. 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.
12. 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 the existing national audit and reporting systems.

**Rural Economy and Funding post-Brexit**

1. A National Council of Rural Advisers was announced by Rural Secretary Fergus Ewing in June. The National Council will provide advice on the potential implications of Scotland leaving the EU as part of the UK, and make recommendations on future policy and support, to ensure a sustainable and productive rural economy. Its remit covers all aspects of future rural development, including appropriate financial support beyond 2022. This will complement the broader work being carried out by the Agricultural Strategy Champions (which in turns builds upon the Vision 2050 for Scottish Agriculture work) and that of the Rural Parliament.
2. Though the Group, co-chaired by Lorne Crerar (Highlands and Islands Enterprise) and Alison Milne (Scottish Tenants Association) does not have a specific Local Government representative, 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 this November).
3. 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 CAP earmarks and constraints, which historically have penalised the UK and most particularly Scotland. This can be a good opportunity to retain but, crucially, increase the 5% compulsory rural spending earmark for local development. Equally with the EU regulations gone there is no reason why the Local Action Groups could not be aligned with local authorities in line with the new Scottish Community Empowerment legislation.

**UK Opting into post-Withdrawal EU Cooperation Programmes**

1. Scottish councils also 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 drawdown 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+ councils have received amounts in the region of a million pounds in recent years.
2. We have already had contact with UK civil servants on this, and it was raised with DExEU by the COSLA President when she met DExEU Ministers Steve Baker MP and Robin Walker MP on 13 September (as it was raised with their predecessors).
3. 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.
4. 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 (SMEs), EASI (Employment and Social Innovation), Consumer and Citizenship programmes.
5. 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.
6. 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 the 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.
7. On the specific case of 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. There would be a National Contact Point that provides beneficiaries information about the programme and provides guidance on how the rules are to be interpreted as well as providing advice on what activities are eligible. The co-financing rate would be 50% and it would be the Scottish Government solely responsible for audit and control, not the EU.
8. In view of the above scoping Leaders will be requested to mandate COSLA, with the support of Councils and professional networks, to open formal negotiations with the UK Government on opting in to some European Cooperation programmes post-Brexit.

**Next Steps**

1. 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 those issues.

**Summary and Recommendations**

1. This paper invites the Board to agree 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 also considers outstanding issues for current EU programmes and the impact of the European Union (Withdrawal) Bill. It also 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.

The Board is invited to:

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**October 2017**