



Research Briefing  
**Wales and the EU: What does  
the vote to leave the EU mean for  
Wales?**

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Produced by: **Research Service, Legal Service and EU Office**  
Date: **June 2016**



**National Assembly for Wales**  
Research Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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Research Briefing

# **Wales and the EU: What does the vote to leave the EU mean for Wales?**

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Following the leave vote in the EU Referendum held on 23 June we have prepared this Research Paper to consider the implications this has for Wales and for the work of the Assembly and Welsh Government.

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# 1. Introduction

Following the leave vote in the EU Referendum held on 23 June we have prepared this Research Paper to consider the implications this has for Wales and for the work of the National Assembly for Wales and Welsh Government.

It is the first in what we expect to be a regular series of updates as the process of withdrawal unfolds over the coming months and years.

The infographic below provides a detailed breakdown of the vote across the UK as a whole, showing the individual results for England, Northern Ireland, Scotland and Wales. We also include an infographic with a breakdown of the vote by local authority within Wales.

The UK as a whole voted by 51.9% to leave the EU. In Wales the leave vote was 52.5%.

England was the part of the UK with the highest leave vote (53.4%), whilst Scotland had the lowest leave vote (38.0%). Within Wales Blaenau Gwent had the highest leave vote (62.0%) whilst Cardiff had the lowest leave vote (40.0%).

Turnout in Wales was 71.7% compared to 72.2% in the UK as a whole. Within Wales Monmouthshire had the highest turnout (77.7%) and Merthyr Tydfil had the lowest turnout (67.4%).

Leaving the EU will have major implications for the work of the Assembly and for the interplay between the UK Government and devolved institutions and will have a prominent place in the work of the Fifth Assembly.

As this will be the first occasion where a Member State has left the EU there is no blueprint on how this will take place in practice. Article 50 of the Treaty on European Union, which sets out the legal process for a Member State leaving the EU, was introduced to the EU Treaties by the changes made under the Treaty of Lisbon (which came into effect in December 2009). As such it is untested.

The Research Paper is structured into the following sections:

**Section 2** provides some background context by looking at what the EU is, how it functions, and how its work relates back to Wales. We draw on the engagement with the EU by the Assembly and Welsh Government since devolution and in particular during the fourth Assembly (2011-2016). This section sets the scene to help understand how withdrawing from the EU could impact on devolved competences, as well as exploring the interplay between the devolved administrations and legislatures with the UK Government on EU matters.

**Section 3** looks at the withdrawal process, focusing on Article 50, and how this could be implemented in practice. In particular we look at what Wales' voice could be in this process, the role of the Assembly and the Welsh Government, vis-à-vis the interests of the other UK devolved administrations and legislatures in this process. Of particular importance to the Assembly and to the people of Wales will be the extent to which Welsh interests and concerns are reflected by the UK Government in the negotiations on withdrawal, and in the post-EU arrangements that would be put in place in the UK for policy areas where the EU currently plays a significant or determining role. There will also be interest in considering the internal structures that may be used to frame the dialogue between the UK and devolved administrations and legislatures.

**Section 4** considers alternative models to EU membership and what these could mean for the UK and for Wales in particular. This is a subject that received attention and much speculation in the build

up to the EU Referendum. It will be the task of the UK Government, probably as part of the formal withdrawal negotiations or in parallel to these, to make the case for an alternative model. How they do this, and how they involve the Assembly and Welsh Government (and the other devolved nations) in this, will be of particular interest to Wales and Welsh stakeholders.

**Section 5** considers the legal implications of the vote to leave, looking at the impact on legislation in force as well as considering the relevance to the Wales Bill 2016 and the future devolution settlement for Wales.

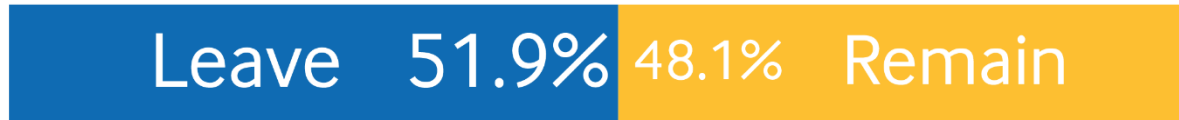
**Section 6** considers in more detail the impact of exiting the EU on the policy and funding issues most relevant to the work of the Assembly and Welsh Government. This section, read in conjunction with **Sections 2, 5 and 7** should give the reader a broad sense and understanding of how EU affairs relate to Wales, and the work of the Assembly and Welsh Government. It should also help the reader get a sense of where there may be gaps that will require action at UK and Welsh level.

**Section 7** looks more specifically at EU funding, including the implications that leaving would have to Welsh access to Structural Funds, the various EU Programmes such as Horizon 2020 and Erasmus+, European Investment Bank (EIB) finance, as well as the Common Agricultural Policy (covered in **Section 6**). Wales is anticipated to receive around €5bn of EU funding during 2014-2020. Leaving the EU is likely to see access to most if not all of this money disappear in the future. Under the alternative models there is no option – currently in use – where there is direct access to funding for agriculture or structural funds (with the exception of the Territorial Co-operation Programmes – where Norway pays for participation of Norwegian organisations in these programmes – see **Section 4** below). These are the two main sources of EU funding coming to Wales, accounting for well over 90% of the EU funding we receive. What action is taken at UK level to address this will be of considerable importance to Wales.

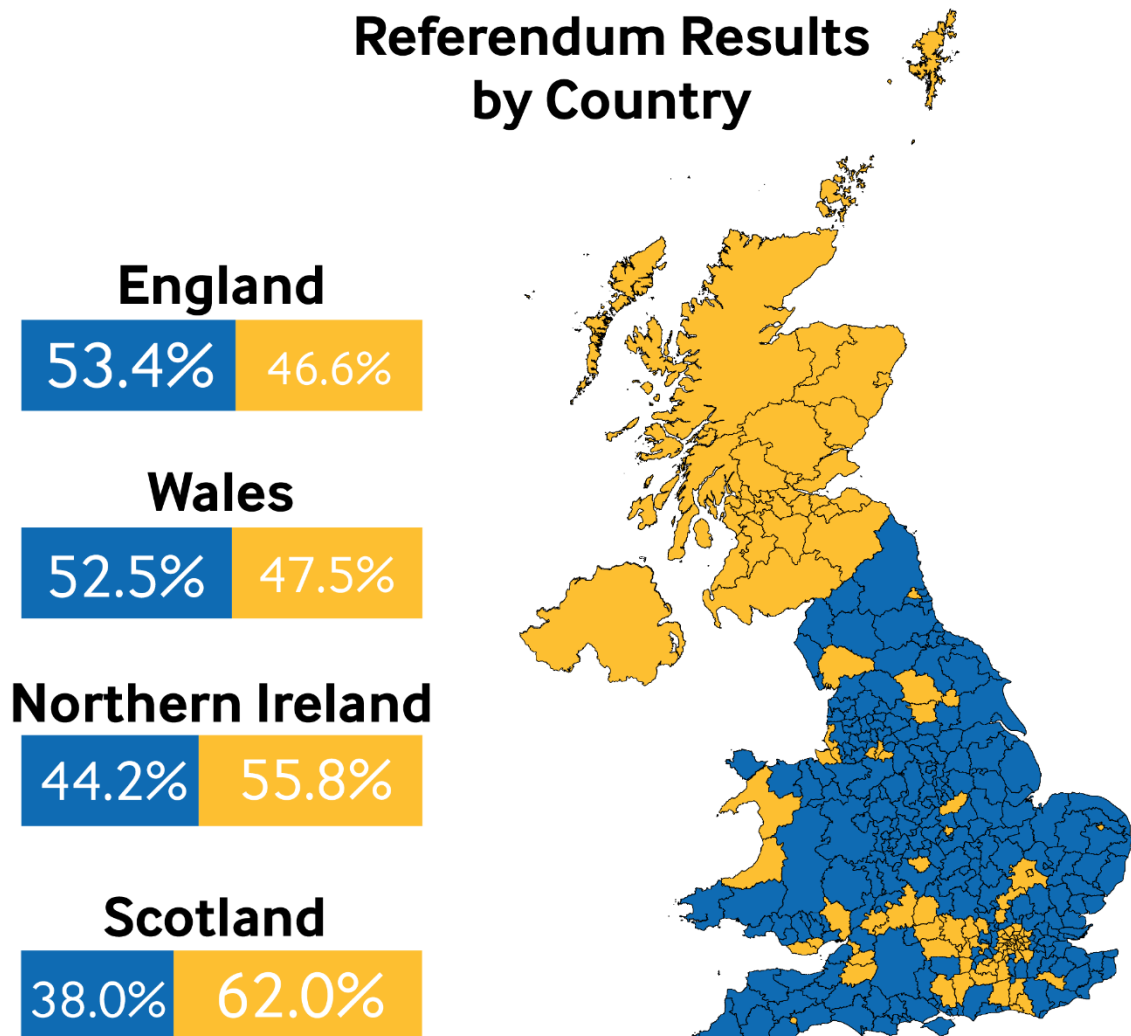


# EU Referendum Result

## Total UK Result



## Referendum Results by Country

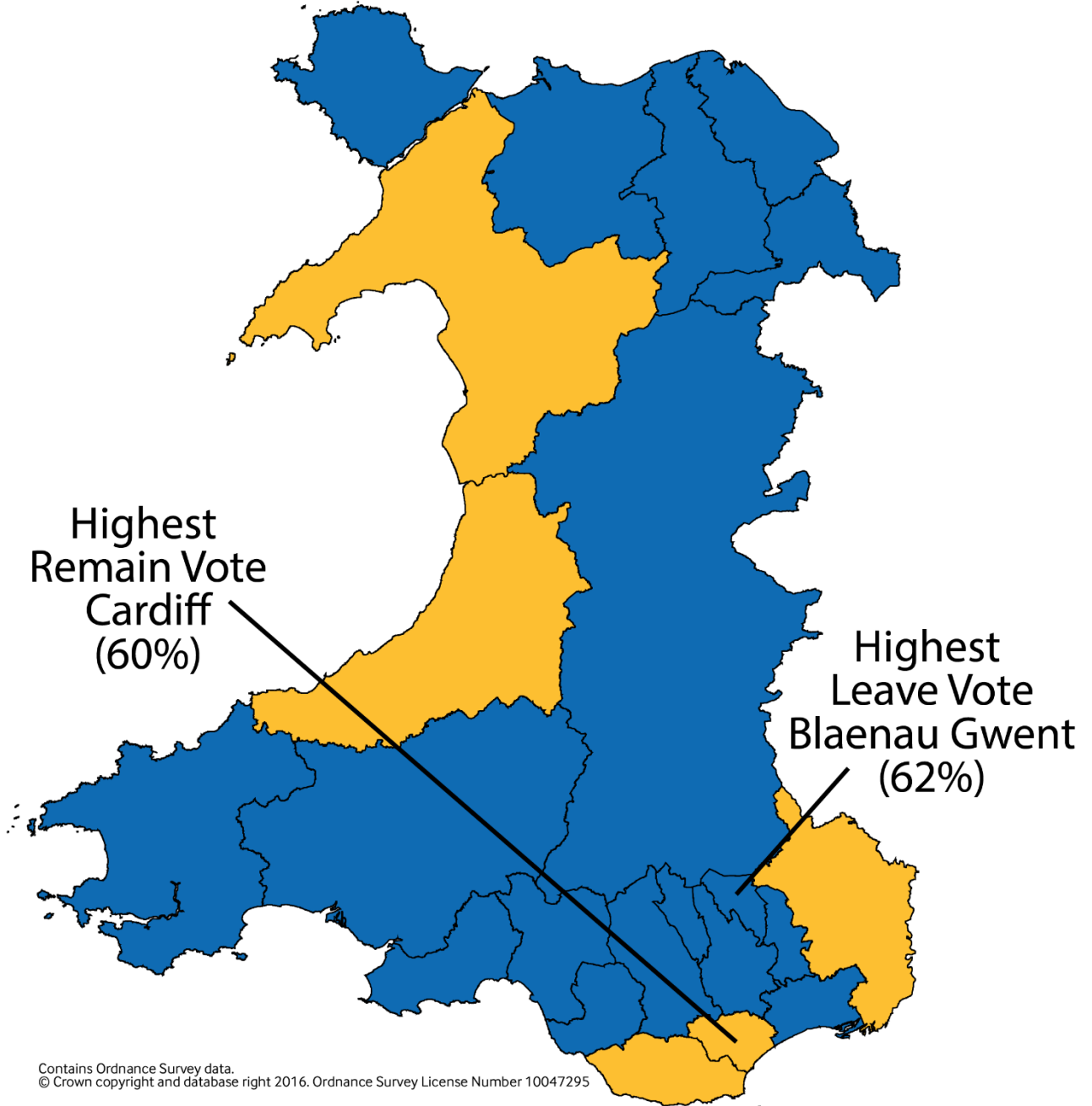


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# Referendum Results in Wales by Local Authority



## 2. Wales and the EU

### What the EU is and how it works

In its essence the EU is an international ‘membership club’ with its own set of rules on how it functions, who can join, the process for joining, its powers and the roles and responsibilities of its members. Its membership is made up of ‘Sovereign States’ and the member in our case is the UK – not Wales. Wales gets access to the EU, and Welsh citizens get rights that come with this, through the UK’s membership of the EU.

The rules of membership are enshrined in two core treaties – the **Treaty on European Union (TEU)** and the **Treaty on the Functioning of the European Union (TFEU)** – the most recent iterations of which came into force in December 2009 (the Treaty of Lisbon).

The rule on how members can leave, Article 50 of the TEU, is a relatively recent innovation added by the Treaty of Lisbon. We look at this in detail in **Section 3** below.

### Sharing of competences

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One of the core principles underpinning the treaties is the ‘pooling’ or ‘sharing’ of sovereignty within certain areas of activity. The EU treaties define these areas, and how these are managed in practice: both for the competences that are conferred at EU level and those that are shared between Member States and the EU:

- **Exclusive EU legislative competence** (these are: customs union, competition rules, monetary policy for those countries who have joined the Euro, conservation of marine biological resources under the Common Fisheries Policy, common commercial policy);
- **Shared legislative competence** between the EU and Member States (these are the internal market, social policy, economic, social and territorial cohesion, agriculture and fisheries, environment, consumer protection, transport, trans-European networks, energy, areas of freedom and justice and common safety concerns in public health matters);
- **Co-ordination** between Member States in areas of economic and employment policy;
- **Competence of the EU to support, co-ordinate and supplement** actions of Member State governments in a number of defined areas (e.g. protection and improvement of human health, education, tourism and culture).

The UK Government undertook a **Review of the Balance of Competences** during 2012-2014 and this provides a comprehensive analysis across all EU policy areas affecting the UK’s relationship. It is an excellent resource for readers interested in looking in further detail at specific policies in action, and the interplay between the UK and the EU levels of policy/law-making in these areas.

### EU law

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Another key principle is the primacy of EU law within areas covered by the Treaties. This means that Member States have responsibilities to implement and comply with EU law that is applicable to them.

The EU adopts laws in a number of different ways, and this will have implications on the detail of the negotiations that will take place on the UK's withdrawal (see **Section 5** below). Of particular note is the distinction between Regulations and Directives:

- **Regulations:** EU Regulations are the most direct form of EU law. Under **Article 288 of the TEU**, the EU has the power to issue Regulations which are binding in every respect and directly applicable in each Member State'. EU Regulations automatically become law in all Member States although national implementation measures can be required to deal with administrative and enforcement issues.
- **Directives:** EU Directives lay down certain end results that must be achieved in every Member State. In order to meet these goals, Member States have to adapt domestic law, but have some freedom to decide how to do this.

## EU Institutions

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The Treaties establish **institutions** that give legal personality to the EU and which carry out the day to day operation of this supra-national body. The main EU institutions in the policy and law-making process are the **European Commission** (the main 'civil service' of the EU), **European Parliament** and the two 'Council' formations that represent Member States' interests: the **European Council** (Heads of State and Government) and the **Council of the European Union** (Ministerial departments of Member State Governments).

In the negotiations on withdrawal the European Commission and the European Council will play the leading roles in this process, although the European Parliament will also take a strong interest, and may influence the shape of the discussions.

In addition to these, the **European Court of Justice** plays a central role in interpreting EU law, whilst there is also strong interest from Wales in the working of the **European Court of Auditors** (in the context of EU funding/finance), the **European Investment Bank** (for investment support in Wales), and the two 'consultative' bodies on which Wales has representatives, the **Committee of the Regions** and the **European Economic and Social Committee**, albeit these two bodies are relatively weak in the policy/law-making process.

## UK and Welsh representation

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The UK has representatives at all of the EU Institutions, including representatives and officials from Wales, and one of the issues that will need to be addressed is their future following withdrawal. There will also be questions about the impact that withdrawal negotiations could have on the status of UK (including Welsh) MEPs and senior officials prior to withdrawal – for example, would senior Commission officials continue in high profile roles? Would MEPs that are Chairs of Committees or Vice Presidents retain these positions of importance? Would UK MEPs continue to be nominated as rapporteurs or shadow rapporteurs by their political groups?

**Annex 1** provides a summary of the bodies in which Wales currently has a stake/interest that would be affected by a decision to leave the EU.

## UK Presidency of the EU second half of 2017

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During the second half of 2017 the UK is due to hold the rotating **Presidency of the Council of the European Union**. In this role the UK would be responsible for Chairing meetings of Council and its various working groups, representing Council in negotiations with the Commission and European

Parliament, and determining the agendas and priorities of Council during the Presidency. What impact will the vote to leave have on this? Will the UK continue to hold the EU Presidency? Will it be able to take an active role in shaping the Council's work during this period? These are questions that will be addressed over the coming weeks and months.

## EU decision-making cycles

The EU operates on the basis of a number of timeframes or 'cycles', which will provide a backdrop against which the negotiations on withdrawal take place.

- **Multi-annual financial framework (MFF):** The current MFF runs from 2014 to 2020 and sets the overall framework in which the 'annual' EU budgets are agreed: the policy headings of the EU budget, including allocations to the different policy areas and various funding programmes within these; and maximum ceilings on expenditure. There is a strong Welsh interest in this process and it has featured prominently in Assembly business, and in the activities of wider Welsh stakeholder organisations. Withdrawal could take place before the end of the current MFF raising questions about the impact this would have on UK and Welsh participation in the current round of EU programmes.
- **EU Institutional cycles:** the European Parliament and European Commission operate on five-year political cycles. The current period covers 2014-2019. The Committee of the Regions is on a slightly different cycle, its current five year mandate runs from 2015 to 2020.
- **Annual cycles:** the European Commission publishes an annual **Work Programme** (usually in the autumn) setting out its policy and legislative programme for the following calendar year. Both the Assembly and Welsh Government traditionally engage in this process, analysing the priorities and relating this back directly to the work of Assembly Committee and to Welsh Government policies. Other Welsh stakeholders undertake similar exercises. There is also an annual European Semester for co-ordination of economic, employment and budgetary policies of Member States. Individual EU funding programmes also often follow an annual cycle of work programmes and calls.

## Relevance to Wales and the UK

Within the UK relations with the EU are regarded as a part of foreign policy and as such are formally a reserved matter for the UK Government.

However, in practice the Assembly and Welsh Government, along with other Welsh stakeholder organisations take an active and direct interest in EU affairs impacting on Wales. This is at both the pre-legislative phase – when the Commission consults with key stakeholders in the preparation of new legislative or policy proposals – as well as during the draft legislative process. This includes direct contact with the Commission and European Parliament in particular. The Welsh Government also has an indirect role in the Council, where it participates as part of the UK delegation on issues relevant to Wales.

The **Government of Wales Act 2006 (GOWA 2006)** requires the Assembly and the Welsh Government, in the exercise of their functions, to comply with EU law.

Welsh Ministers are generally responsible for the transposition (i.e. implementation) of EU Directives in relation to subjects devolved to Wales. The power to make such Statutory Instruments may be contained either in specific Acts of Parliament or of the Assembly, or by virtue of section 2(2) of the European Communities Act 1972 (for those subjects of which Welsh Ministers have been designated by Order in Council).

In transposing EU Directives the Welsh Ministers work within the guidance set out in the UK Government's **Transposition guide: how to implement European Directives effectively** and in the Concordat on Co-ordination of EU Policy as set out in Part 2 section B of the **Memorandum of Understanding** between the UK and devolved governments..

The Welsh Government, along with other designated authorities in Wales (such as local authorities), also has a responsibility to ensure compliance with EU laws that fall within the Assembly's legislative powers or the functions of Welsh Ministers.

Apart from its legislative role, the Assembly also has an important role to play in ensuring that EU laws are complied with by holding Welsh Ministers to account for their decisions and responsibilities through its business and committee structures.

Finally, section 108(6)(c) of the GOWA 2006 also prevents the Assembly from passing legislation that is incompatible with EU law. This would be re-enacted as section 108A(2)(d) in the change proposed by clause 3 of the Wales Bill 2016.

## EU and devolved competences

Included within the 21 devolved areas set out in Schedule 7 to the GOWA 2006 (as currently amended) are a number of policy fields where the EU has extensive competence, such as agriculture, fisheries and rural affairs, animal health and welfare, food, and environment. In these fields there is an established body of EU law and regulation that Wales must already comply with.

In other areas, such as – education and health – the scope for EU intervention is more limited, with Member States retaining primary responsibility for policy and law-making. The EU can play a supporting role – for example, encouraging benchmarking or exchanges of best practice, as well as taking action in specified areas where there is a clear cross-border or European interest. For example, in health the EU has the scope to take action to tackle the spread of contagious diseases.

For policy areas where the UK retains the lead competence, the Assembly, the Welsh Government and other Welsh stakeholders and organisations also have an interest in the potential impact that changes in EU policy and legislation could have in Wales. These include a number of aspects of economic development and employment policy, competition policy (including public procurement), financial services and immigration.

In **Section 6** below we consider in more detail the interplay between EU policy and law-making within these different policy areas and in **Section 7** we look at the different EU funding that Wales has been eligible for through the UK's membership of the EU.

## Welsh influence and engagement with EU decision-making

### Council: an indirect voice for Wales

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Within the Council, the UK is represented by UK Government Ministers supported by the UK civil service: namely the UK Permanent Representation to the EU (UKREP) in Brussels and the various Whitehall departments. Although Welsh Ministers and officials participate as part of the UK delegation to Council meetings, the voice at the table is a UK voice. Therefore, at the governmental level, Welsh interests are represented through the UK line, and Wales' ability to influence (formally in Council) is contingent on the ability of Welsh Ministers and officials to shape the UK negotiating position.

The Assembly and Welsh Government have an obvious interest in how UK positions on EU policy and legislation are defined and formulated in the first place. The degree and extent to which devolved legislatures and governments participate in this and are able to influence and shape this position is crucial.

This approach to negotiations in the Council is determined by the UK Government – and contrasts with the Belgian approach (which at EU level is unique) where the Ministers from the 'regional' governments in Belgium (Brussels, Flanders and Wallonia) are able to formally sit in Council on issues that fall within their own competence.

## Coordination of European Policy in the UK

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The arrangements for EU engagement within the UK are defined in the Concordat on Co-ordination of European Policy, which is part of a **Memorandum of Understanding** (last updated in October 2013) between the UK Government and the devolved administrations to manage relations between the different governments on the interplay between reserved and devolved matters. The Concordat states that UK Government will provide opportunities to influence EU proposals at an early stage and to inform the formulation of the UK position to be presented in Council.

The Memorandum of Understanding also establishes a **Joint Ministerial Committee (JMC)** to provide central coordination of the overall relationship between governments in the UK, and focused on issues straddling the devolved/non-devolved boundaries. There is a specific **JMC (Europe)**, which is chaired by the Foreign Secretary (or Minister for Europe), and meets prior to each European Council meeting, so around four times a year. It acts as the forum for the exchange of information and the discussion of strategic or cross-cutting issues where there is a devolved government interest.

There is no such formal Memorandum of Understanding, Concordat or Joint Parliament meeting in place to guide or manage the relationships between the UK Parliament and devolved legislatures on matters straddling devolved/non-devolved boundaries. Instead, there are a number of informal structures in place. For example the EC-UK Forum, which meets on average twice annually bringing together the Chairs of the European (and equivalent) Committees of the House of Commons, House of Lords, Scottish Parliament, Northern Ireland Assembly and the National Assembly for Wales.

The House of Lords Constitution Committee published a **report** in May 2016 *The Union and Devolution*. This report includes criticism of the functioning of the JMC. The report calls for the JMC to be reformed 'to promote co-operation and collaboration, rather than grandstanding and gesture politics'. The Chair of the Committee called for a renewed approach to devolution based around collaboration:

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*UK Governments have failed to adapt to devolution. We urgently need 'a new mindset' within Government. Devolved competencies now cover so many areas of public responsibility that the delivery of government policies often requires collaboration between the UK and devolved governments. This is not yet being done effectively.*

*Instead of the 'devolve and forget' attitude of the past, the UK Government should be engaging with the devolved administrations across the whole breadth of government policy. Not interfering, but co-operating and actively managing the cross-border and UK-wide implications of differing policy and service delivery choices. Shared and overlapping policy areas need to be handled sensibly, with each administration conscious of the interests of the others.*

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A number of questions arise from this in the context of the UK's engagement in the withdrawal negotiations:

- Will the JMC (Europe) be the forum used at governmental level through which the UK Government will engage with the devolved administrations during the negotiations on withdrawal?
- Will there be a parliamentary forum to bring together representatives from the UK and devolved legislatures during the negotiating process? Will this be through existing structures such as the informal meetings of the EC-UK Forum and meetings of Presiding Officers/Speakers? Or will new structures be envisaged?
- How will policy-specific issues be addressed as part of the negotiations? For example concerning devolved areas like agriculture, fisheries, health and education?
- How will the UK Government engage the devolved legislatures and administrations on questions around alternative models to EU membership (which we look at in **Section 4** below)?
- What discussions will take place with the devolved legislatures and administrations on questions around alternative UK mechanisms that may be envisaged to replace the current EU policy and funding frameworks for agriculture, fisheries, and Structural Funds?
- How will devolved legislatures and administrations be involved in any decisions around potential continuation of UK participation in other EU programmes (such as Horizon 2020, Erasmus+ and Creative Europe)?

## Engagement by the Assembly

The Assembly has engaged with EU affairs in a number of ways since it was established in 1999.

The Assembly has a role in indirectly influencing the position of the UK Government and in scrutinising the Welsh Government's strategic priorities in relation to the EU. The Assembly has previously carried out these roles by undertaking committee inquiries at early stages in the EU policy-making process, before the European Commission publishes its final legislative proposals.

Assembly Members may also ask questions to the relevant Welsh Minister at any time during the EU legislative process about the impact of an EU legislative proposal on Wales and the preparations taking place within Welsh governmental departments ahead of its implementation.

## EU affairs and Assembly committees

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For the first three Assemblies (1999-2011) there was a dedicated European and External Affairs Committee that was responsible for EU affairs. This included engagement with the EU Institutions, the European Commission and MEPs in particular, as well as wider EU networks. It also included scrutiny of the Welsh Government Ministers on EU affairs – traditionally focused on the First Minister – as well as dedicated inquiries into EU policy/legislation.

Under the Fourth Assembly EU affairs were mainstreamed across committees, with the policy/legislative committees leading on EU affairs falling within their remit. Examples of EU activity in committees in the Fourth Assembly includes:

- **Constitutional and Legislative Affairs Committee:** responsible for subsidiarity monitoring (see below) as well as undertaking inquiries into **Wales' role in EU decision-making** and the **UK Government's EU reform agenda**.



- **Enterprise and Business Committee:** undertook a number of substantive inquiries on EU funding and related matters including: (i) **EU Structural Funds** (ii) **Horizon 2020** (two reports: **July 2012** and **May 2013**); and (iii) **EU Funding Opportunities 2014-2020**; and (iv) the **Potential of the Maritime Economy in Wales**. There was also a strong EU dimension to other inquiries such as **Assisting Young People into Work** and **Youth Entrepreneurship**. The Committee also undertook EU scrutiny of Welsh Government Ministers.
- **Environment and Sustainability Committee:** undertook inquiries into: (i) **Common Agricultural Policy** (ii) **Common Fisheries Policy**; (iii) **Organic Production and Labelling of Organic Products**; and (iv) **Proposed Prohibition of Driftnets Fisheries**. Most of the other work of the Committee had an EU dimension given the high level of integration of EU policy in the fields of agriculture, fisheries/marine, environment, energy and climate change. Taking this into account the Committee adopted an **Approach to EU Affairs** to ensure sufficient attention was given to priority dossiers.

The other Assembly Committees also undertook important pieces of work on EU policy/legislation. For example, **Health and Social Care Committee's** inquiry into New Psychoactive Substances looked at the draft EU legislation in this area, and the Chair of the Committee participated in a European Parliament stakeholder conference in London, discussing the Committee's findings with the rapporteur for the proposals, Polish MEP Michał Boni.

## Assembly engagement in Brussels

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Assembly Committees and Assembly Members regularly visit Brussels to inform this work. During the Fourth Assembly there were 10 committee visits, which also included a visit to the European Investment Bank's Headquarters in Luxembourg.

## European Parliament and the Welsh MEPs

The European Parliament, as co-legislator on the vast majority of EU legislation, is another key institution through which Welsh stakeholders can seek to influence draft proposals.

The Welsh MEPs in particular have an important role to play acting as an interface for the Assembly, Welsh Government and other Welsh stakeholders interested in engaging with the European Parliament's work.

During the Fourth Assembly, a strong emphasis was placed on a 'legislature to legislature' approach, with direct engagement with the European Parliament, with the Welsh MEPs acting as conduits in this process. This was most evident in the work of the Environment and Sustainability Committee and Enterprise and Business Committee, but also seen in the work of the other committees. This saw Assembly Committees drafting amendments to Commission proposals and submitting these to the European Parliament's subject committees – via the 'rapporteurs' and the Welsh MEPs.

## Subsidiarity monitoring

The principle of subsidiarity is enshrined in Article 5 of the TEU, which dates from 1992. At its core is the idea that action should only be taken at EU level when the desired objectives cannot be effectively achieved through actions taken at the national or regional level. Parliaments across the EU have an important role to play in monitoring the functioning of subsidiarity in practice.

The revisions to the EU Treaties introduced by the Treaty of Lisbon in 2009 saw the introduction of an '**early warning system**' on subsidiarity. This system enables Member State Parliaments (in the UK context this would mean the House of Commons and House of Lords) to submit '**reasoned opinions**' on draft EU legislative proposals where they have concerns that the proposed legislation infringes the

principle of subsidiarity. These reasoned opinions must be submitted within an eight-week timeframe, from publication of the draft legislative proposals. When enough concerns are raised the Commission can be required to review and reconsider its proposals.

The Assembly has a role to play within this 'early warning system' by way of **Article 6 of Protocol No.2 to the TFEU** which states:

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*"It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers."*

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The Assembly is considered a 'regional parliament' rather than a 'national parliament' at EU level. What this means in practice is that if the Assembly has subsidiarity concerns, in order for these to be formally taken into account as part of the 'early warning system' it must get the House of Commons and/or the House of Lords to include these concerns in a formal 'reasoned opinion' to be submitted to the European Commission. This must take place within the eight week timeframe prescribed.

The Assembly's Standing Orders require a committee to be designated to consider subsidiarity issues relating to draft EU legislation where this concerns legislative powers of the Assembly or the executive functions of Welsh Ministers. During the Fourth Assembly the Constitutional and Legislative Affairs Committee was given this responsibility. For further details of CLA Committee's work on subsidiarity during the Fourth Assembly is available on the **archived web-pages of this Committee** – including the regular 'Subsidiarity Monitoring Reports' prepared for the Committee by Assembly officials on the monitoring of draft EU legislation.

How relevant this 'early warning system' will be during the withdrawal process remains to be seen, given new EU legislation usually takes a minimum of 12-18 months to be passed, and in many cases far longer. What is clear is that once we leave the 'early warning system' will become irrelevant as the Protocol only applies to 'national parliaments' and 'regional parliaments' of Member States. In the event that the UK decided to join the EFTA and the EEA (see **Section 4** below on alternatives to EU membership) and as a consequence be subject to relevant EU legislation that applies to the whole EEA, there is likely to be interest in ongoing monitoring of draft EU legislation. However, given in such circumstances (and based on the experience of Norway, Iceland and Liechtenstein) the UK would not have a formal voice in the EU legislative process, any concerns the UK Government may have on draft EU legislation would stand outside of the 'early warning system' of the Treaty, and would have to be addressed through the arrangements in place for the EEA. Whether or not those arrangements would change or evolve as a result of the UK becoming part of EFTA and then EEA is beyond the scope of this paper.

## Partnership and networking

The **Assembly** also has a general role in promoting Welsh interests amongst the EU institutions. This includes talking directly to the European Commission, the European Parliament (in particular the four Welsh MEPs), the representatives from Wales on the EU's two consultative bodies - the Committee of the Regions (comprised of local and regional politicians) and the Economic and Social Committee (representing sectoral interests) - and through participating in formal and informal EU networks.

The Assembly actively participates in a number of formal and informal networks to support this engagement to promote its work on EU affairs and draws from the experience of other parts of Europe. The EC-UK Forum, already mentioned earlier, in this section is one such network. See **Annex 1** for examples of networks in which the Assembly, Welsh Government and other Welsh stakeholder organisations participate.

Leaving the EU would have implications for Welsh participation in these formal and informal networks. What this will be in practice remains to be seen, and is likely to be contingent on the nature of the withdrawal agreement that is negotiated.

## 3. Withdrawing from the EU

### Notification

The process by which a Member State can withdraw from the EU is set out in Article 50 of the TEU:

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*1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*

*2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.*

*That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*

*3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.*

*4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.*

*5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.*

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The first step, to make the leave vote from the EU Referendum effective, would be for the UK Government to **notify the European Council** of its intention to withdraw from the EU. This notification would mean the process set out in Article 50 of the TEU would come into effect. Article 50 **does not specify when** notification needs to take place so notification to the European Council would **not** have to occur immediately. If Parliament wanted to debate a UK exit before the formal notification, or if a parliamentary committee wanted to take evidence from the Government on its decision to notify, formal notification could be delayed.

In a Statement on 22 February 2016 following the European Council at which the new Settlement for the UK in the EU was agreed, the Prime Minister stated:

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*if the British people vote to leave, there is only one way to bring that about, namely to trigger Article 50 of the Treaties and begin the process of exit, and the British people would rightly expect that to start straight away.*

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In their recent report the **House of Lords EU Committee** concluded that:

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*There is nothing in Article 50 formally to prevent a Member State from reversing its decision to withdraw in the course of the withdrawal negotiations. The political consequences of such a change of mind would, though, be substantial.*

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But withdrawal from the EU is final once the withdrawal agreement enters into force. Article 50 makes clear that if a State that has withdrawn from the EU seeks to rejoin, its request shall be subject to the same procedures as any other applicant State.

## Negotiation

Once notification has taken place Article 50 sets out a **two-year timeframe** within which a withdrawal agreement is to be **negotiated by the UK and the European Council** (representing the other 27 Member States). This two-year period can be extended with unanimous agreement of all parties concerned.

In the negotiations, the UK would be treated as a non-EU State for the purpose of Article 50. It would **not** therefore participate in discussions concerning the withdrawal negotiations in the **European Council** or the **Council**.

When the negotiations are complete, the consent of the European Parliament to the draft withdrawal agreement is necessary, after which it is signed and then concluded by the Council. If the agreement is deemed to be 'mixed' (where Member State as well as EU competences are engaged), it will have to be ratified by the Member States as well.

The European Council would adopt by consensus, but without the UK, 'guidelines' for the EU's negotiating mandate. Under Article 50 TEU the Union would conduct negotiations based on these guidelines and in accordance with Article 218(3) Treaty on the Functioning of the European Union (TFEU). Under this Article, the European Commission submits a recommendation to the Council, which adopts a Decision authorising the opening of the negotiations and, 'depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team'.

These are the usual rules by which the Council sets a negotiating mandate for the Commission to negotiate an agreement between the EU and third countries. The Commission is likely to be the negotiator, but Article 218(3) TFEU does not prescribe that it is.

Under Article 218(4) the Council can nominate a special committee to work with the Commission in the negotiations.

Commentators seem to agree that the UK MEPs would be able to participate in European Parliamentary business concerning the withdrawal, including the European Parliament vote on any withdrawal agreement. Unless otherwise agreed the UK's Commissioner would continue with his portfolio; EU Court judges from the UK would continue with their work and staff from the UK working for the EU institutions would continue in post until withdrawal took effect.

The UK would still be a **Member State** during the withdrawal negotiations and would continue its participation until the withdrawal agreement entered into force two years (or more) after notification. **Existing EU law would continue to apply** in the UK, and it would be bound by the **principle of 'sincere cooperation'**.

In the UK the withdrawal agreement would probably follow the usual procedures for treaty ratification: **it would be laid before Parliament with a UK Government Explanatory Memorandum for 21 sitting days and debated before it could be ratified.**

## Involvement of devolved institutions in negotiations

Under the *Scotland Act 1998*, the *Government of Wales Act 2006* and the *Northern Ireland Act 1998* the devolved legislatures are obliged not to legislate or act in a manner that is **contrary to EU law**. These Acts also provide concurrent powers (shared with the UK government) to **observe, transpose and implement EU law**.

Section 53 of the *Scotland Act 1998* provides for the transfer to Scottish Ministers of the responsibility to observe and implement EU obligations in areas within the devolved legislative competence of the Scottish Parliament. When a Directive covers a devolved policy area the Scottish Government transposes it into Scots law. Clause 18 of the new Wales Bill 2016 would give Welsh Ministers a similar power.

## Devolved legislatures' consent

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The House of Lords Report on withdrawal from the EU stated:

*We asked Sir David [Sir David Edward, former Judge of the European Court of Justice] whether he thought the Scottish Parliament would have to give its consent to measures extinguishing the application of EU law in Scotland. He noted that such measures would entail amendment of section 29 of the Scotland Act 1998, which binds the Scottish Parliament to act in a manner compatible with EU law, and he therefore believed that the Scottish Parliament's consent would be required. He could envisage certain political advantages being drawn from not giving consent.*

*We note that the European Communities Act is also entrenched in the devolution settlements of Wales and Northern Ireland. Though we have taken no evidence on this specific point, we have no reason to believe that the requirement for legislative consent for its repeal would not apply to all the devolved nations [RS emphasis].*

Although the Westminster Parliament may repeal the *Human Rights Act 1998* or the *European Communities Act (ECA) 1972*, this would not bring an end to the domestic incorporation of the ECHR or EU law in devolved nations. It would still be necessary to amend the relevant parts of devolution legislation. In the view of some **legal commentators**, although the UK Parliament may amend the devolution Acts, the UK Government has stated that it will not normally legislate on a devolved matter without the consent of the devolved legislature. This requires a Legislative Consent Motion under the Sewel Convention which is now enshrined in statute in Scotland in the *Scotland Act 2016*. Clause 2 of the **Wales Bill 2016** contains a similar provision.

However, when the Fourth Assembly's Constitutional and Legislative Affairs Committee (CLAC) **looked at the proposals** it concluded:

*...we heard that placing the legislative consent procedure on a statutory basis would have no legal effect, but would provide legal recognition of the political reality. Reading across from the draft Scottish clauses, we were told that any disputes over legislative consent would still have to be dealt with politically.*



Furthermore, in the course of evidence Professor Thomas Glyn Watkin posed the questions: who decides what is meant by devolved and what is meant by 'usually'? Could actions taken by the UK Parliament to implement a UK-wide vote on withdrawal be deemed sufficiently abnormal for that clause to be by-passed?

## Participation in the negotiation process

The Fourth Assembly's CLAC expressed its concerns at the lack of engagement of the UK Government with the Assembly during the EU reform negotiations. The Scottish Parliament raised similar concerns, which suggest that this will be an important area for further discussion should the referendum lead to withdrawal.

CLAC also recommends in its **Legacy Report** the establishment of a dedicated Committee to engage in the withdrawal negotiation process.

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*We were [...] disappointed at the lack of consultation or engagement with the devolved legislatures during the negotiations on the reform agenda. There would have been clear benefits, for example, to a structured discussion on the sovereignty basket: the call for stronger powers for national parliaments in the EU decision-making process. The role of devolved legislatures in EU scrutiny is important and it is unfortunate that the voice of the devolved legislatures in the process of raising a so-called 'red card' has not been considered. The outcome agreed in the New Settlement for the UK raises the possibility of a UK Parliament, acting exclusively on English competences (for example in the fields of agriculture or environment) calling for a veto on European Commission proposals, without being required to take account of or reflect the interest or concerns of the UK's Devolved Legislatures on such matters.*

*This is an issue that perhaps can be addressed through internal discussions in the UK.....*

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In May 2016 the House of Commons Scottish Affairs Committee took evidence from Scottish and UK Ministers on the EU Referendum and its potential impact on Scotland. The Scottish Minister for International Development and Europe, Alistair Allan MSP told the Committee that the Scottish Government had little engagement with the UK Government about the reform process and the Secretary of State for Scotland said there was no contingency plan for the UK to leave the EU. A similar **assertion was made by the Prime Minister** in early 2016, although it was conceded that the Treasury was engaged in contingency planning 'for the immediate financial stability consequences if the country was to vote to leave'.

At this stage we are only able to pose questions about how the withdrawal process will be implemented:

- How will the Welsh Government (and the other UK devolved administrations) be involved in the formal negotiations?
- How will Welsh interests be addressed and reflected in the UK Government's negotiating position?
- What role will the Assembly play in monitoring and scrutinising the Welsh Government's engagement in this process and the UK Government's representation of Welsh interests and concerns?



- How will the Assembly organise its work and that of its committees to ensure effective engagement by Assembly Members in this process?

In relation to Scotland, Professor Keating took a quite upbeat view:

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*Even if Scotland is obliged to leave the EU along with England, however, matters will change. The Scotland Act of 1998 does not specify the powers of the Scottish Parliament, only those reserved to Westminster. Everything else goes either to Scotland or, in many cases, to Europe. If we leave the EU, many of the European powers would revert, not to Westminster but to Holyrood. This includes large swathes of policy in relation to agriculture, fisheries, environment, justice and home affairs, higher education and social policy. Scotland could then choose, in these fields, whether to align its policies more with London or with Brussels, so retaining a connection with Europe if not a role in European policy making.*

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In Wales, we are in uncertain territory as the devolution settlement will itself be changing during the negotiating process and once it has been concluded. Also, the fact that the single England and Wales jurisdiction would remain in place will have different implications and lead to different results for Wales than for Scotland.

## 4. Alternative models to EU membership

There are a number of alternative models the UK may consider for its future relationship with the EU. Three of these (the Norway EEA model, negotiated bilateral agreements and a World Trade Organisation-only model) are discussed at length in the UK Government publication **Alternatives to membership: possible models for the UK outside the EU**.

### The Norway Model

Norway is in the **European Economic Area (EEA)** but not in the EU. The EEA is an internal market providing for free movement of persons, goods, services and capital, and is comprised of the 28 EU Member States plus Norway, Iceland and Liechtenstein. This is the model outside of the EU which is most integrated with the Single Market. These three countries make contributions to the EU budget, and take part in some non-economic activity such as counter-terrorism. Though they must follow most of the rules of the Single Market, they have no vote or vetoes in how these rules are made.

Non EU Members of the EEA do not make contributions to or receive CAP funding. Although they are not generally eligible for European Structural Funding, Norway and Liechtenstein qualify for some **cross-border and transnational programmes**. The EEA Agreement ensures participation by Iceland, Liechtenstein and Norway in **a number of other EU programmes**, including Horizon 2020 (research and innovation) and Erasmus + (education and training). In addition, as part of the EEA Agreement, Iceland, Liechtenstein and Norway provide funding in 16 Member States to strengthen bilateral relations and reduce economic and social disparities in the EEA.

It is not certain that the UK would be able to join the EEA. Academic Michael Keating **argues that**:

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*It was designed for small states, which would not affect the overall European balance of power and, in the case of Norway, whose government really wanted to join the EU but lost two referendums*

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### Negotiated bilateral agreements

A number of countries have negotiated differing degrees of access to the EU's Single Market, bringing with them a certain number of the obligations of EU membership.

Switzerland's agreement with the EU goes furthest to replicating the terms of EU membership: both in terms of opportunities and obligations. In return for a partial access to the Single Market, Switzerland must accept the free movement of people, contribute to EU spending and comply with most of the rules of the Single Market. Similarly to the non-EU EEA countries, Switzerland has no votes or vetoes on how Single Market rules are made.

Switzerland does not participate in CAP, is partially involved in Horizon 2020, and though not generally eligible for European Structural Funding, it participates in some cross-border and transnational programmes.

In 2014 Swiss voters narrowly backed a referendum proposal to reintroduce strict quotas for immigration from EU countries. Following this vote the European Commission announced that it would postpone talks on Swiss access to Horizon 2020 and **Erasmus +** as a consequence, noting that 'this (vote) goes against the principle of free movement of persons between the EU and Switzerland'. The EU and Switzerland have put their talks on hold until following the UK referendum.

Along with Norway, Iceland and Liechtenstein, Switzerland is in the **European Free Trade Association (EFTA)**: an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States. However, Switzerland is not in the European Economic Area (EEA) Agreement, which enables three of the four EFTA Member States (Iceland, Liechtenstein and Norway: see above) to participate in the Single Market.

At the other end of this spectrum, Canada has recently finished negotiating a Free Trade Agreement with the EU, which took seven years and is not yet in force. The Canadian model involves less access to the Single Market than Switzerland has, and accordingly entails fewer obligations. With a Free Trade Agreement, countries agree market access, tariff levels and quotas for trade between them and the EU. Exporters wishing to sell to the Single Market are generally obliged to comply with its rules. Again, parties to a Free Trade Agreement do not have votes or vetoes on how these Single Market rules are made. Canada does not contribute to the EU budget, and does not directly receive funding from its funding streams. There is not free movement of people between Canada and the EU, though there are arrangements for the temporary movement of certain professionals.

### World Trade Organisation-only Model

The UK, along with all other EU Member States, is also a member of the **World Trade Organisation (WTO)**. In the absence of alternative arrangements, the UK would fall back on its WTO membership to provide the terms of its relationship with the EU. This is the only formal model of a future relationship which is currently available to the UK and that would not require further negotiations.

Under this model, UK access to the Single Market would be subject to the same tariffs as all 161 other WTO members that have not negotiated their own arrangements. Along with the limited access to the Single Market, this model brings with it minimal obligations to the EU. WTO countries are not required to contribute to the EU budget, or accept free movement of people. Again, businesses trading exclusively under WTO rules wishing to sell to the Single Market are generally obliged to comply with its rules. Once again, WTO members do not have votes or vetoes on how these rules are made. WTO countries do not necessarily have direct access to EU funding streams.

### Non EU-models for international trade relations

Some commentators have drawn attention to other international trade relationships that the UK is either part of or could join whilst discussing the future for the UK outside the EU. In the absence of a new formal relationship with the EU, these could perhaps mitigate some of the impacts of loss of access to the Single Market. None of these relationships would entail participation in any EU funding streams.

### Commonwealth Bloc

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The Commonwealth forms a diverse group of 53 countries, 3 of which are EU Member States. Advocates of a **Commonwealth free trade area** tend to argue that the historical and language ties that the UK has with Commonwealth members would enable us to take advantage of increased growth in emerging Commonwealth economies. However, others argue that the UK has far more in common economically with EU economies, which are a more natural market for the sorts of goods and services that the UK exports.

## The Anglosphere

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Proponents of the **Anglosphere** argue that the UK's natural allies and trading partners are those countries – such as Australia, New Zealand, Canada and the USA – that share English as a first language and have a similar political tradition to that of the UK. As such, some feel that the UK would do better to focus on pursuing deeper relationships with countries such as these, rather than the EU.

## 5. Legal implications of vote to Leave

### Implications for legislation in force

The vote to leave the EU has no immediate legal effect on UK law. Until the UK withdraws from the EU it remains a Member State and all its obligations under the EU Treaties and EU legislation remain in force.

Withdrawal would take effect on entry into force of a withdrawal agreement. If no agreement is reached within two years from the UK's notification of withdrawal, and the European Council has not unanimously agreed to extend this period, withdrawal will take place automatically at the end of that two-year period.

Most EU legislation takes the form of Directives (which need to be implemented by Member States, including devolved legislatures) and Regulations (which are directly applicable, but may require enforcement legislation on the part of Member States). This legislation often provides the framework within which domestic legislation is made. Within the devolved powers of the Assembly and Welsh Government, that is particularly the case in relation to environmental and agricultural matters.

It would not be essential to replace all UK legislation which implements EU law (typically, EU Directives) by the point of withdrawal. However, it would be extremely desirable for all such legislation to have been reviewed before withdrawal, to see if it would remain legally workable after withdrawal or whether amendment or replacement would be needed. This is aside from the question of whether the UK or any devolved Government would **wish** to amend or replace the legislation in question, once it no longer needed to comply with EU law. Further information on this issue is given below.

Also, some EU law (typically, EU Regulations) forms part of UK law, without the need for UK legislation transposing it. This law would cease to have effect in the UK on withdrawal and the implications of that should be assessed before withdrawal.

Withdrawal from the EU would make it inevitable that the European Communities Act 1972 would be repealed. A very large proportion of UK legislation (including legislation made by devolved legislatures) is made under powers contained in section 2(2) of that Act. The repeal of the Act would, in the absence of suitable transitional provisions, lead to the automatic lapsing of all secondary legislation made in reliance on that power. This would leave a large gap in Welsh agricultural and environmental law, in particular, if no transitional provisions had been put in place.

The work involved in reviewing and potentially replacing all UK laws which give effect to EU law and/or refer to EU legislation is so great that it is likely that the responsible government would seek to enact transitional provisions to keep all/much of those laws in force during a period after withdrawal (although this may depend on the length of the withdrawal negotiation period). It would also be premature to repeal/amend these laws until it is clear whether the UK will be bound in future by any of the EU obligations it implements (as it would be under an EEA or EFTA model or under an association agreement with the EU).

It is not entirely clear at this stage whether the power to make such transitional provisions, in areas of devolved policy, would lie with the Welsh Government and Assembly or with the UK Government and Parliament, due to the fact that relations with the EU is not a devolved subject, but individual subjects like agriculture, and environmental protection, are.

It is also unclear how the courts would interpret any implementing legislation after withdrawal. While the UK is a member of the EU, domestic implementing legislation must be interpreted so as to give effect to the purpose of the underlying EU Directive (and indeed the Treaties). Once the UK was no longer a Member State, that interpretive rule would no longer apply automatically. The UK Parliament could nevertheless legislate to require the courts to continue to operate the interpretive rule for the time being. It is unclear whether the Assembly could do likewise in relation to devolved subjects.

The extent to which UK courts would continue to apply that rule of interpretation is only one aspect of the direct impact on them. Decisions of the Court of Justice of the European Union are binding on domestic courts in their interpretation of EU law. Following withdrawal, such decisions would be – at most - of persuasive authority, and UK courts could be faced with new arguments about the interpretation of legislation that originally stemmed from the EU.

### **Impact of a vote to leave on the Wales Bill 2016**

As the implications of withdrawal will be uncertain for some time, and EU law will continue to apply in Wales in the meantime, there is unlikely to be any immediate impact on the Wales Bill 2016.

No amendment is proposed to section 108(6)(c) of the Government of Wales Act (GOWA) 2006, which restricts the Assembly's legislative competence by reference to a requirement to comply with EU law. GOWA 2006 (as amended) would need to be amended in the future so that this restriction was removed at the point of withdrawal.

Other provisions in the Wales Bill 2016 contain references to EU law, such as the reservations relating to foreign affairs and the definition of 'food'. A more general review of European references in devolution legislation will therefore be needed.

As such amendments would affect the Assembly's legislative competence, it would, under the current legislative consent convention enshrined in Devolution Guidance Notes require the Assembly to pass a legislative consent motion. However, the statutory version of the legislative consent convention contained in the Wales Bill 2016 does not capture this part of the convention. Instead, it would require the legislative consent of the Assembly only where the United Kingdom Parliament is legislating 'with regard to devolved matters'. If the current non-statutory convention continues to be respected, however – as the Scottish Government has confirmed that the UK Government agrees will be the case for Scotland – the Assembly's consent **will** be required.

The repatriation to the UK of powers upon withdrawal will inevitably have significant effect on the devolution settlement. Many of those powers would already be captured by reservations proposed in relation to Financial and Economic Matters and Trade and Industry. However, the Wales Bill 2016 contains very few reservations relevant to the environment, agriculture and fisheries. If powers currently exercised at the EU level are therefore repatriated to Wales, there would be significant implications for the Welsh Government in terms of policy development. Important negotiations would also be required in relation to the transfer of the corresponding budget, as well as that for regional development.

## 6. Impact of leaving the EU on devolved policy areas in Wales

This section provides a more detailed look at how the UK leaving the EU may impact upon policy areas devolved to the National Assembly for Wales.

### Agriculture and rural affairs (including animal welfare)

Policies affecting Welsh farming and its food supply chain are determined largely by the EU through the **Common Agricultural Policy (CAP)**, food safety and animal welfare legislation and also indirectly by the **World Trade Organisation (WTO)** rules (see **Agriculture Agreement**).

The CAP is the EU's mechanism for providing direct support to farmers, for protecting the countryside and for supporting the development of rural areas. The CAP runs for a seven-year period. Under the current round of CAP, 2014-2020, Wales will receive approximately £250 million of funding per annum in direct payments to farmers in addition to €655 million for its 2014-2020 rural development programme. Under the CAP each Member State receives an annual allocation for issuing direct payments to farmers. In the UK this allocation is then divided between the UK Government and devolved administrations. The current proportion of the UK allocation each administration receives was agreed in negotiations prior to this round of the policy.

The Welsh Government is directly responsible for implementing the CAP within Wales (and is required to comply with the various EU Regulations which set the legal framework for the policy. For farmers eligible for CAP this means the Welsh Government manages the direct payments they receive.

The second pillar of CAP – rural development – provides support to farmers and the wider rural economy, which for 2014-2020 is focused on competitiveness of farm business, diversification of activities, promoting high quality environmental projects, and encouraging wider community development in rural areas. Similarly to direct payments the Welsh Government is responsible for developing and delivering rural development schemes funded by the CAP in Wales.

The EU runs a **number of schemes** aimed at promoting and supporting high quality agricultural products, as part of the marketing activities to promote EU products including through trade to non-EU countries. This includes the Protected Geographical Indicators scheme. Wales has a number of products covered by these PGIs including Welsh Lamb, Welsh Beef, Halen Môn (Anglesey Salt) and Pembrokeshire Early Potatoes.

The EU also sets the legal framework for the marketing, labelling and regulation of food and feed stuffs including the standards on organic farming, pesticides and genetically modified organisms. This legislation falls within devolved competence and is almost entirely the responsibility of the Welsh Government.

The EU sets the overarching policy and legislative framework on animal health, hygiene and welfare. EU Regulations currently govern areas such as the control of diseases, welfare of animals at the time of slaughter and during transportation, the regulation of animals used in scientific experiments and the export and import of live animals and animal products. The Welsh Government currently receives annual funding from the EU towards its **Bovine TB Eradication Strategy**.

In addition to regulating trade across the single market external trade agreements on agricultural products are currently negotiated by the EU on behalf of all Member States. The EU currently has trade agreements in place with a number of external countries including South Africa, Mexico, Egypt, Morocco and a block of Central American countries. Products from Welsh farmers exported to these



countries currently benefit from the tariff reductions and import quotas agreed by the EU. A **full map of the countries** with which the EU currently has preferential trade agreements is available on the European Commission's website.

Under all of the scenarios that have been discussed in relation to withdrawal the UK would not continue to participate in the CAP or the EU negotiated international trade agreements. This means the legislation, policy and funding affecting the areas described above would no longer be set at EU level.

This raises a number of questions that would be pertinent to Wales given the importance of CAP to this devolved area:

- How would UK withdraw from CAP? Would it be phased in over time or cease immediately after UK exit?
- What framework would be put in place within the UK to replace CAP? How would this be established? UK level? Devolved level?
- What funding agreement would be put in place to replace the current direct payments and rural development funding of CAP Pillars 1 and 2?
- What would happen to agricultural products with special designations such as Welsh Beef and Welsh Lamb labels?
- What arrangements could be envisaged for trading of Welsh agricultural produce within the EU?
- What arrangements would be established within the UK and Wales for replacing the existing body of EU legislation within the agriculture and food sectors, including rules on animal health, welfare, hygiene, monitoring/tagging of animals, disposal of carcasses etc.?

## Fisheries and marine

The Welsh Government is responsible for the management and enforcement of sea fisheries in Wales, including implementation of the **Common Fisheries Policy** (CFP). The CFP sets out the rules that govern and manage fishing of certain stock within European seas. This includes including setting quotas for the amount of fish different fishing fleets are allowed to catch; setting some rules on the types of equipment used; setting out structures for Member States to manage their fisheries on a regional basis; managing the access of fleets to different waters and regulations aimed to ensure fisheries operate at sustainable levels.

There are a number of EU marine policies in place that the Welsh Government is responsible for implementing. These include the **Marine Strategy Framework Directive** and the **Marine Spatial Planning Directive**. The Marine Strategy Framework Directive requires Member States to collaborate to improve the environmental status of seas. The Marine Spatial Planning Directive requires Member States to develop marine spatial plans by 2021 in accordance with some minimum standards and to cooperate in the development of these plans in cross-border areas. Marine plans, legislation and policy in Wales are being developed to comply with these Directives.

The **European Maritime and Fisheries Fund** (EMFF) is the fund that supports the delivery of the CFP and other maritime policies in the EU. It operates over a seven year period (2014-2020). Wales has been allocated €19.7 million of the UK's €243 million total allocation. More information is available on the **Welsh Government's Marine and Fisheries** web-pages.

As with CAP, fisheries policy is an area where UK withdrawal would lead to a discontinuation of participation in the CFP and the EMFF. However, it would continue to be an important factor in negotiated arrangements.

As such similar questions would arise for the negotiations on withdrawal and preparation of the period post-EU. Within the fisheries sector in particular this would include addressing historical fishing rights and access of boats to British waters, and the access of British fishers to EU waters.

## Cohesion policy (Structural Funds)

The central aim for the current **EU Structural Funds** programmes is to create an environment which will support economic growth and jobs.

Under the current round of Structural Funds, which runs from 2014 to 2020, Wales has been allocated almost £2 billion from the EU - with £1.6 billion going to West Wales and the Valleys and over £325 million to East Wales. In total, along with match funding, the current round of Structural Funds are expected to support a total investment in Wales of approximately £3 billion. In Wales the Welsh Government administers the funding, although the public, private and third sectors are all involved in project delivery.

This is the third time that West Wales and the Valleys has qualified for the highest level of Structural Funds support, which is available to the 'less developed' regions of the European Union – regions that have a GDP per head that is less than 75% of the EU average. Cornwall and the Isles of Scilly is the only other area of the UK to have received this designation as a 'less developed' region for a third time.

The Structural Funds consists of two funding streams – the European Social Fund (ESF) and the European Regional Development Fund (ERDF).

The ESF programmes, worth nearly £642 million of EU funds for West Wales and the Valleys and some £162 million for East Wales, are expected drive a total investment (i.e. with match funding) of around £1.2 billion. ESF spending is aimed at supporting projects that are intended to help transform the prospects of the most marginalised and vulnerable in society, lead to increases in productivity and growth, and invest in the future of young people in Wales.

The ERDF programmes, worth some £960 million for West Wales and the Valleys and £162m for East Wales, are expected to drive a total investment of around £1.8 billion in Wales. ERDF spending is aimed supporting research and innovation, increasing the availability of finance for small and medium-sized enterprises, funding investments in renewable energy and energy efficiency, as well as investing in roads, public transport and urban development.

## European Territorial Co-operation

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The European Territorial Co-operation programme 2014-2020 provides opportunities for regions in the EU to work together to address common social, economic and environmental challenges. Wales is involved in the following ETC programmes:

- **Ireland Wales Programme:** The Ireland Wales Co-operation programme supports businesses and organisations across both nations and is worth €79 million in ERDF funding.
- **Atlantic Area programme:** a sea-focused transnational programme, worth €140 million in ERDF funding, links regions on the Atlantic coast including Ireland, areas of France, Spain and Portugal and areas of the UK, including all of Wales. The Welsh Government currently acts as the Atlantic Area Programme's National Correspondent for the UK.

- **North West Europe programme:** worth €396 million in ERDF funding, this transnational programme links the UK (including all of Wales) with Ireland, Belgium, Luxembourg and areas of France, Germany, the Netherlands and Switzerland.
- **Interreg EUROPE:** this interregional programme, worth €359 million in ERDF funding, covers the EU28 plus Switzerland and Norway and is aimed at policy exchange across EU regions.
- **URBACT III:** this interregional programme, worth €74 million in ERDF funding, covers the EU28 plus Switzerland and Norway. URBACT promotes sustainable urban development and enables European cities to work together to develop solutions to urban challenges.
- **ESPON 2020:** worth €41 million in ERDF funding, ESPON (European Observation Network for Territorial Development and Cohesion) covers the EU28 plus Iceland, Norway and Switzerland.
- **INTERACT:** this programme covers the EU28 plus Norway and Switzerland and is worth €39 million in ERDF funding. INTERACT is the hub for exchanging information and best practice amongst European Territorial Co-operation programmes.

See **Section 7** below for a discussion on the implications of leaving the EU to Welsh access to this funding.

## Environment

A significant amount of current environment legislation is derived from European Law. Member States have, to date, generally supported an EU-led approach as many environmental issues and concerns have cross-border implications: for example, air pollution and quality, and invasive non-native species.

Since the 1970s, the EU has agreed over 200 pieces of legislation to protect the environment, covering a comprehensive range of policy areas, meaning that EU law underpins a significant proportion of environmental legislation within Wales (and the UK more broadly).

This includes legislation covering:

- Waste and recycling including the **Waste Framework Directive**, the **Hazardous Waste Directive**, the **Shipment of Waste Directive**, the **Landfill Directive**, the **Waste from Electronic and Electrical Equipment Directive**;
- Water including the **Water Framework Directive**, the **Drinking Water Directive**, the **Bathing Water Directive**, the **Floods Directive**, the **Urban Waste Water Directive** and the **Nitrates Directive**;
- Planning and development including the **Strategic Environmental Assessment Directive** and the **Environmental Impact Assessment Directive** setting out environmental assessment requirements for plans and projects; and the Marine Strategy Framework Directive as already covered above in the sub-section on fisheries and marine;
- Nature and biodiversity including the **Habitats Directive**, the **Birds Directive**, and **Invasive Alien Species** regulations;
- Air and noise legislation: including the **Air Quality Directive** and the **Environmental Noise Directive**;
- Industry: Eco-labelling standards for products and the **Environmental Liability Directive**;

– Chemical safety and assessment under the **Registration, Evaluation, Authorisation and Restrictions of Chemicals Directive**.

All these have a direct impact on the work of the Assembly, Welsh Government, Natural Resources Wales, local authorities and national parks, businesses and third sector organisations across Wales.

Implementation and delivery of waste management and legislation by the Welsh Government and Welsh local authorities takes place within the EU's legal framework on waste. The Welsh Government's recycling and landfill targets are required to meet the EU's minimum standards and local authority waste collection services must meet the requirements of the Revised Waste Framework Directive. European legislation also governs the collection, treatment and disposal of hazardous and electronic waste and the Welsh Government, Natural Resources Wales, local authorities and businesses must comply with these standards.

The Water Framework Directive is implemented based on river basins, rather than national boundaries, through River Basin Management Plans (RBMPs). There are three river basin districts identified in Wales, two of which straddle the border with England. The Welsh Government is responsible for the district lying wholly in Wales (the Western Wales district) and is jointly responsible with the UK Government for the two districts that cross the border (the Severn and the Dee districts).

Standards for bathing water quality are set out on an EU basis. In Wales, Natural Resources Wales is responsible for testing designated bathing waters at least 12 times a year. An annual report is published which sets out which bathing waters in Wales met the required standards and which failed. There are 102 designated bathing waters in Wales.

The assessment of the environmental impacts of plans and programmes in Wales such as the M4 relief road by government and public authorities are currently governed by the requirements of the Strategic Environmental Assessment Directive. Similarly, standards and requirements for assessing the environmental impacts of certain individual projects such as power stations are set currently by the Environmental Impact Assessment Directives. Developers and planning authorities in Wales must take account of the relevant requirements.

There are **92 Special Areas of Conservation (SACs) in Wales**, including some cross border sites, which are designated under the Habitats Directive for their importance to vulnerable plant and animal species. There are also **20 Special Protection Areas (SPAs) in Wales**, including 3 cross border sites, designated under the Birds Directive for their importance to vulnerable bird species.

The Welsh Government and Natural Resources Wales are responsible for the identification, designation and management of these sites and other public bodies, businesses and third sector organisations must take account of their impacts on the species protected by them.

The Welsh Government's National Air Quality Strategy and local management action on air quality taken by local authorities is framed by the requirements of the European legislation on Air Quality. The legislation sets standards for levels of air pollution, requires relevant authorities to report regularly what these are and to take action to address high levels of air pollution.

Most of this legislation comes in the form of Directives, meaning that the UK Government or the Welsh Government will have transposed this into UK law. As such it is on the UK statute books.

The vast majority of environmental policy and legislation in Wales is governed by legal frameworks and regulations set at a European level. This means that the approaches taken on environmental policy, unlike some other policy areas, are relatively consistent across the UK.

As a large amount of the European legislation is transposed into UK law a number of policies and regulations could initially remain unchanged. However, as environment is largely a devolved policy area different governments across the UK could take the opportunity to develop their own distinct approaches to policy. In this instance discussions would need to take place about issues such as the cross-border impacts of policy changes. In addition, as environmental standards within the EU will remain the same consideration will need to be given to what requirements Welsh producers of goods would need to meet in order to be able to trade with EU Member States. Some of the European environmental legislation takes the form of regulations and has not been directly transposed into UK law in these areas consideration would need to be given as to the impacts of any withdrawal and replacement of this legislation.

Environmental projects/initiatives and networks are a priority for support from a number of EU programmes, including the Structural Funds, CAP, CFP, LIFE+ and Horizon 2020, and Welsh Government, universities, businesses and other stakeholder organisations have been active within these different programmes.

Future participation in these different funding streams would be affected by leaving the EU, and would be contingent on the outcome of the negotiation.

## Energy and climate change

The links between energy and climate change are clear. The Assembly's competence over energy is currently in a period of flux: the Wales Bill 2016 is likely to give the Welsh Government further consenting powers over energy projects up to 350 MW, and new environmental legislation has committed Wales to action on climate change. Whilst not all of the levers for climate change action are fully devolved, Wales has its own climate change targets that fall within the context of EU and UK law. Both areas are likely to be key aspects of the future work of the Assembly.

The EU has ambitious climate action targets for 2020: a 20% reduction in greenhouse gas emissions (compared with the 1990 baseline), 20% of total energy consumption from renewable energy, and a 20% increase in energy efficiency. These are set out in the **Renewable Energy Directive (2009)** (which establishes an overall policy for the production and promotion of energy from renewable sources in the EU) and the **Energy Efficiency Directive (2012)**. By 2030 the EU has set a target to cut greenhouse gas emissions by 40%, to achieve at least 27% of total energy consumption from renewable energy, and at least a 27% increase in energy efficiency.

The EU's competence within the field of energy is set out in Article 4 of the TFEU (energy is listed as a 'shared competence' like agriculture, environment and fisheries), and Article 194 of the TFEU (which refers to energy in the context of the internal market and protecting the natural environment).

In recent years there has been a strong commitment at EU level to create an **Energy Union**. This has been stepped up under the Juncker Commission, the Energy Union being one of the 10 political priority initiatives of his Presidency. The Energy Union aims to address the fragmentation in energy markets across the EU, by moving towards an integrated energy framework, aimed at addressing energy security concerns, increasing the use of renewable energy sources to deliver on the EU's climate and energy commitments and to improve competitiveness and efficiency through the creation of an internal energy market across the EU. For more information on relevance to Wales see Research Service **Research Briefing on the Energy Union** published in May 2016.

Proposals for the Energy Union were broadly welcomed by the UK Government, particularly in terms of its forward-looking climate policy and the centrality of completing the internal energy market. Welsh Government energy policy, for example *Energy Wales: A Low Carbon Transition* and *Green*

*Growth Wales: Local Energy*, already addresses a number of ideas proposed by the Energy Union framework: The Assembly's Environment and Sustainability Committee conducted a detailed inquiry into a Smarter Energy Future drawing on European energy models. The Welsh Government has recently published its first 10 year **Energy Efficiency Strategy for Wales**, carrying through themes from the EU level to be actioned in nationally, including a focus on energy efficiency of housing, businesses and public sector properties.

In practice, many areas are non-devolved, with energy conservation, transmission, distribution and supply, and the regulation of energy efficiency sit outside of the competence of the Assembly. The UK Government is unlikely to want to reverse the trend for more transparency and a level playing field currently being implemented by the Commission's Third Energy Package and by the 2015 Framework for Energy Union.

The EU has increasingly prioritised energy and climate change as areas to be supported with EU funding – the new Structural Funds programmes include minimum thresholds of spending for renewable energy projects, whilst Horizon 2020 also has a high commitment to supporting R&D in these areas. An example of this in Wales is the commitment of £80m of EU Structural Funds to develop marine energy to support two test sites off the coasts of north and west Wales. The ocean energy sector has been given strong strategic priority at EU level, with the recent adoption of an Ocean Energy Roadmap, as it sees this area as having enormous potential, but faces a number of challenges in realising this potential. Wales has featured prominently in this work, in particular the plans to create a number of tidal lagoons on the coast of Wales, including Tidal Lagoon Swansea Bay.

The UK's Climate change commitments are set out within the *Climate Change Act 2008*, which provides a UK-wide framework within which the Welsh Government (and other UK devolved administrations) have set their own climate change policies and laws. The *Environment (Wales) Act 2016* places new duties on Welsh Government to ensure greenhouse gas emissions are at least 80% lower than the 1990/1995 baseline. This is the same target as is set out in the *UK Act and the Climate Change (Scotland) Act 2009*. An EU exit would not remove the legally binding UK climate targets under the *Climate Change Act 2008*, although it could increase focus on all aspects of UK-based generation. This could be the case in particular if exit resulted in poorer security of supply through decreased interconnectivity to Europe, reduced harmonisation of EU energy markets, or less investment into the UK by multinational companies.

Leaving the EU could also impact on the UK's participation in the **EU Emissions Trading Scheme (ETS)**. This scheme aims to reduce industrial greenhouse gas emissions through a 'cap and trade' system. Whilst participation in the ETS is a reserved matter it does have a significant impact in Wales due to the presence of a number of high energy intensive industries in the country, and it has featured in the discussions on responding to the **steel crisis**.

The **United Nations Framework Convention on Climate Change (UNFCCC)** held its 21<sup>st</sup> annual conference of the parties (COP) in Paris at the end of 2015. The key outcome of the conference was an agreement between the 197 states parties (of which the UK is one) on limiting rising global temperatures to 'well below' two degrees Celsius of the pre-industrial baseline. An exit would affect the UK's international climate commitments under the UNFCCC. Currently the UK negotiates as a part of the EU block and has internally set targets that together with those of other Member States aim to meet the EU's overall target. Withdrawal from the EU would mean having to address that lack of a UK specific target under UNFCCC.



For future UNFCCC negotiations, the UK would be a single voice in the talks. The Welsh Government and Assembly could therefore have a more direct access to influence the position presented in the negotiations. However, the UK Government Review of Balance of Competences noted that negotiating as part of an EU block was more influential at the international level given the weight of a body representing 28 Member States.

## Health and social care policy

Health and social care is devolved, with the Welsh Government responsible for delivery of health care services, through the National Health Service, and the promotion of health in Wales.

The EU competence in this area is more limited than in areas like agriculture, fisheries and the environment. The Treaty makes explicit that Member States are responsible for:

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*...the definition of their health policy and for the organisation and delivery of health services and medical care. The responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them. (Article 168.7, TFEU)*

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Public health is listed within Article 6 of the TFEU amongst a range of policy areas where the EU can:

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*...carry out actions to support, coordinate or supplement the actions of the Member States. This can include for example supporting mutual learning through benchmarking and sharing of good practice between the different health care systems operating across the EU.*

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Article 168 of the TFEU sets out the types of actions the EU can undertake within the field of public health, which includes measures to combat 'major health scourges' and 'serious cross-border threats to health'.

It also defines the scope for EU-level actions in a number of other areas: (i) standards of quality and safety of organs and substances of human origin, blood and blood derivatives; (ii) veterinary and phytosanitary fields with regard to protection of public health; and (iii) standards of quality and safety for medicinal products and devices for medical use.

Beyond these specific measures in the Treaty on public health, there are a number of other ways in which health care and social security systems are affected by EU law, which link directly to the freedoms of movement within the EU (and in some cases the European Economic Area and Switzerland as well).

There is common legislation in place covering the European Economic Area and Switzerland for **co-ordination of social security systems**, (Regulation (EC) No.883/2004) giving access rights for citizens of the participating countries to the various health and social care services. This includes the **European Health Insurance Card (EHIC)**, which gives access to state-provided medical care during a temporary stay in another EU country, and extends to Norway, Liechtenstein and Iceland with the European Economic Area and also to Switzerland which has a bilateral agreement with the EU covering this area. It also includes an authorisation process for pre-planned treatment in the countries in the EEA and Switzerland.

In 2011 a new **EU Directive on the application of patients' rights in cross-border healthcare (Directive 2011/24/EU)** introduced scope for citizens to apply for reimbursement of healthcare treatment. This is limited to EU Member States.



There are a number of pieces of EU legislation within the field of employment which also impact on the delivery of health care services. This includes legislation concerning:

- mutual recognition of professional qualifications – which enables health professionals from EU countries to work in the health care systems of other EU Member States
- working conditions such as the Working Time Directive which sets a limit on the number of hours that can be worked in an average working week (this legislation is also pertinent to fire and rescue services)

Along with other public bodies and authorities in Wales, EU rules on public procurement provide the legal framework for procuring goods, works and services related to the management and delivery of health care in Wales. As EU Directives, these are transposed into UK law through legislation enacted by the Houses of Parliament.

Medical research is another area where the EU dimension is of particular interest. This includes participation by Welsh universities and research teams, through competitive bidding, in the EU's research programme Horizon 2020. The EU adopted new legislation on data privacy in April 2016, and during the negotiations on the draft proposals there was strong lobbying by national health services who were concerned about the potential impact of restrictive rules on access to medical records for the purpose of medical research.

One other area in which the EU has recently sought to legislate concerns new psychoactive substances. The Assembly's **Health and Social Care Committee** took a particular interest in this during the Fourth Assembly with its inquiry into this issue.

The European Charter of Fundamental Rights also includes a number of references to health and access to health care services (Articles 31, 32 and 35).

As noted in **Section 5** above, once the UK withdraws from the EU the specific treaty provisions would no longer apply to the UK. However, the nature of its withdrawal agreement will determine the extent to which some of the other areas highlighted above continue to remain pertinent to health care services in Wales and the other parts of the UK. Co-operation across health and social security systems extends beyond the EU28 Member States to include the Switzerland, Norway, Liechtenstein and Iceland. The securing of reciprocal arrangements is likely to be a priority in negotiations on this subject.

For a more detailed overview of how the EU relates to health care within the UK visit the **NHS European Office web-site**.

## Education

As with health, education is covered by Article 6 of TFEU. As such, the scope for EU intervention is more limited than in other fields covered earlier in this section.

Once again the Treaty is clear that Member States are responsible for education, with scope for the EU to play a supporting role (Article 165.1 TFEU):

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*The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.*

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One of the areas where EU intervention in the field of education and training is most marked is through the actions to support and facilitate mobility of students, teachers and academics within the EU. This support is provided through the Erasmus+ programme.

Welsh universities, research institutes and research active businesses also have a strong interest in participating in the EU's research programmes – Horizon 2020 (and the predecessor Framework Programmes). During 2007-2013 Wales secured over €140 million in EU finance from this source, and Welsh HE has a target to increase this for 2014-2020.

The Enterprise and Business Committee took a strong interest in these areas during the Fourth Assembly, undertaking two inquiries that considered the opportunities for Wales from the EU's research and mobility programmes: (i) **EU Funding Opportunities 2014-2020**; and (ii) **Horizon 2020**

As with health, EU law concerning the Single Market, employment law, rules on mutual recognition of professional qualifications, and public procurement legislation etc. apply equally to public education providers within Wales. The rights to non-discrimination (set out in Articles 18-25 of the TFEU) include prohibition of discrimination on the grounds of nationality (Article 18). This means that, for the purposes of support in paying costs of tuition, EU citizens from outside the UK wishing to study in Wales must be treated the same as if they were Welsh domiciled. However, the Welsh Government is not required to provide the same level of support to students studying in Wales who are from other parts of the UK. Students from England, Scotland and Northern Ireland, therefore, do not receive the Tuition Fee Grant on offer to Welsh-domiciled students. These rules apply only to costs of tuition and not to assistance with maintenance costs.

The UK is a member of the Organisation for Economic Co-operation and Development (OECD). The OECD has recently had a considerable influence on Welsh Government policies and strategies, most notably in education. The Welsh Government has placed considerable stock on the OECD's Programme for International Student Assessment (PISA) and also commissioned the OECD to carry out a review of education policy in Wales (PDF 3.74MB), which reported in 2014. In the event of the UK leaving the EU, it would still remain an OECD member unless a separate decision was taken to change this. OECD membership is not exclusive to EU Member States. Nor is it exclusively European as members include countries from across the globe, for example Japan, Mexico and the US.

## Welsh language, culture and tourism

As with health and education the scope of EU involvement within the areas of language, culture and tourism is limited.

Welsh has co-official status at EU level. There are agreements in place that permit Welsh to be used by Welsh Ministers in Council meetings where they are representing the UK; Welsh representatives on the Committee of the Regions in plenary sessions (something that former Assembly Member Rhodri Glyn Thomas did on four occasions between 2010 and 2016); and in correspondence with the European Commission.

The EU has provided support, usually through funding for networks, projects and research activities, for lesser-used languages. Welsh organisations have often played a prominent role in this work. Similarly in the field of tourism, EU funding is one of the main ways in which EU level activity impacts on this sector, in particular through the Rural Development Programme and through EU Structural Funds.

Within the cultural and creative industries sector, Welsh artists, film-makers and creative enterprises have been successful in securing funding under the EU's Creative Europe and Media programmes. A

notable example of this is Hinterland/Y Gwyll, which with the support of EU funding has been broadcast in a number of EU countries.

The future access to such initiatives and programmes would be contingent on the outcome of the negotiations on withdrawal. Other non-EU countries (for example Iceland and Norway) can participate in Creative Europe – on the basis that they make a financial contribution to support the involvement of their own artists/creative enterprises in EU projects/networks under this programme.

## Single Market

The UK's participation in the Single Market is a reserved matter, with the UK Government taking the lead in policy and legislative matters relating to this. However, it is an area where the Welsh Government and the other UK devolved administrations take a strong interest.

The concept of a 'single market' was introduced in 1986 by the Single Market Act. The EU Treaties it should be noted do not make reference to a Single Market – they refer to an internal market within the EU between Member States. The focus of the Single Market is to treat the EU as one territory, without internal borders or other regulatory barriers to the free movement of goods, capital and services. This includes measures to tackle barriers to trade, and to standardise/harmonise technical and other rules that provide the regulatory framework for goods, capital and services. It also includes public procurement rules, to open up contracts for provision of goods, works and services to competition across the EU, and the wider EU competition framework that aims to remove distortions to competition and trade.

The Welsh Government states that in 2014, more than 600 firms across Wales exported goods to the EU worth over £5 billion, equivalent to 43% of the total exports of goods. Furthermore it says that over 500 firms from other EU countries have operations in Wales, providing more than 57,000 jobs.

The **Centre for Economics and Business Research** (CEBR - March 2014) found that over 4 million direct and indirect jobs in the UK depend on exports to the EU. Approximately 200,000 of these jobs are in Wales, around 14% of the workforce.

**UK Government Statistics for 2015** (HM Revenue and Customs) on Welsh exports of goods to the EU show that steel products accounted for just under 15% of the total, machinery and transport equipment around 25%, and export of petroleum, petroleum products and related materials just under 17% of the total. Food and live animals accounted for around 5% of the total exports of goods to the EU from Wales in 2015.

The EFTA members of the European Economic Area (Norway, Liechtenstein and Iceland) participate in the Single Market (see **Section 4** above). In return for this access they are required to comply with relevant EU legislation that sets the rules for the operation of the Single Market.

Freedom of movement of goods, services, capital and people underpin the functioning of the EU internal market and are at the heart of the Single Market idea.

## Trade

Trade policy is an exclusive power of the EU – so only the EU, and not individual Member States, can conclude international trade agreements and legislate on trade matters (apart from any implementing legislation required of Member States).

The European Parliament decides jointly with the Council on the framework of EU trade policy – through the ordinary legislative procedure. While the European Commission maintains the right to

initiate trade policy, for its proposals to be formally adopted, agreement has to be reached between the co-legislators. International agreements are adopted by the Council, after the Parliament has given its consent.

A map of the trade agreements the EU has in place is available on the Commission website [here](#), with further information available [here](#).

The World Trade Organisation (WTO) is the international organisation for trade, with 162 members. The EU has been a **member of the WTO** since 1995. Each EU Member State is also a WTO member in its own right. The European Commission speaks for all EU Member States at almost all WTO meetings.

## **TTIP**

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The Transatlantic Trade and Investment Partnership (TTIP), is a proposed trade agreement between the EU and the USA. If agreed, it will become the biggest free trade pact in the world. In April 2016 the EU and the USA concluded the **13th round of TTIP talks**.

Since its inception TTIP has proved hugely controversial. Some commentators are fearful of the proposals, which they think could lead to privatisation by stealth of valued public services, and give corporations an unprecedented level of power over elected governments, as well as provoking a regulatory 'race to the bottom' in terms of environmental and safety standards. Probably the most contentious point in negotiations has been the issue of dispute settlement between investors and states. The European Commission has rebutted these claims. In May 2016 Trade Commissioner Cecilia Malmström wrote a **letter** to Unite, refuting its charge that the NHS was under threat from TTIP, and stating 'The NHS is not affected by TTIP or other EU trade agreements regardless of how its services are delivered'.

## **Welsh trade after leaving the EU**

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Whilst regulation of international trade is non-devolved, the Welsh Government is active in promoting Welsh exports and inward investment, within its general competence for economic development. It seems likely however, that if the UK ceased to be a member of the EU, competence for the regulation of international trade would be conferred on the UK Parliament, alongside competence for other matters of foreign affairs.

If the UK ceases to be an EU Member State, it will lose access to all trade agreements other than those it has by virtue of its WTO membership if it has not already negotiated arrangements with the EU. There are a number of most likely models for future trade access to the EU, which are discussed in the **Section 4** 'Alternative models to EU membership'. Outside of the EU, the UK would be free to begin negotiations for trade arrangements with the rest of the world in a way that it is not able to under its EU membership.

As and when TTIP enters into force, the UK would not automatically be party to this arrangement. President Obama has previously stated that, in the event of leaving the EU, the UK would be at the 'back of the queue' in terms of negotiating a trade deal with the USA.

Information about the destination and types of Welsh exports is available on the **Welsh Government** website. For the four quarters up to and including 2015 quarter 4, USA (including Puerto Rico) was the largest export market for Welsh products, followed by United Arab Emirates, Germany, Ireland and France. For the same period, 41% of the total value of Welsh exports went to EU countries, and 59% went to non-EU countries. For the UK as a whole, 47% of exports went to the EU, and 53% to non-EU countries.

## Connectivity

The EU Treaties provide for the creation of Trans-European Networks (TENs) across the EU in the areas of transport, telecommunications and energy infrastructures. Additionally, the Connecting Europe Facility (CEF) provides EU funding for TENs development.

The TEN-T Regulation (Transport) drew considerable political interest during the Fourth Assembly. This work was led by the Enterprise and Business Committee, which looked at the Welsh infrastructure included on the TEN-T network. One of the concerns this Committee raised was the lack of a Welsh presence on the 'corridor' running through the UK – no Welsh infrastructure was included on the North Sea Mediterranean Corridor which runs through the UK to Ireland.

Following the vote to leave, there is likely to be interest in the impact this would have on Trans-European Networks and the UK's participation, particularly given the importance of the UK for Irish access to European markets. With principal surface transport routes running from Ireland through Wales to the rest of the UK and Europe, the Assembly and Welsh Government will have an interest in looking at how flows of goods, services and people along these key passenger and freight routes may change and any changes in border controls.

The TEN-T Regulation sets out standards to which "core" and "comprehensive" TEN-T networks must be developed by 2030 and 2050 respectively. The Welsh and UK Governments may no longer be bound by these obligations in the areas for which they are responsible. These obligations included a requirement for the UK Government to electrify both the north and south Wales main railway lines by 2030.

Additionally, the Welsh Government and Welsh infrastructure operators may no longer be able to access EU funding for infrastructure development. For example, the Welsh Government and Welsh ports were in discussions with the Irish Government and Irish ports on access to Motorways of the Sea funding under the Connecting Europe Facility which can be used to invest in port infrastructure and hinterland connections. Under the Welsh Government's Superfast Broadband project BT is currently rolling out next-generation broadband across Wales, partly funded using EU Structural Funds.

Discussions over the future participation of the UK (and Wales) in the Single Market could be of particular relevance here, as the transport, telecoms and energy networks are seen as key infrastructure sectors to be developed to support the functioning of the Single Market.

## Migration and the EU

The right to move and reside freely in another Member State is one of the rights granted by EU citizenship (as per Article 21 of TFEU). Anyone who has nationality of an EU Member State is also an 'EU citizen', and as such, has 'free movement' rights across the EU (subject to certain restrictions, as set out in the 'Free Movement of Persons'/'Citizens' Directive).

The 'free movement of people' principle entitles citizens of EU Member States and their families to reside and work anywhere in the EU. This right also applies to citizens of non-EU EEA States (Iceland, Norway and Liechtenstein) and Switzerland.

As well as the freedom to 'move and reside freely' throughout the EU under EU citizenship provisions, the TFEU contains Articles specifying the free movement rights of workers and self-employed persons. Free movement is supported by a broader set of rights, such as protection against discrimination on the grounds of nationality for employment, and provisions to co-ordinate social security so that people do not lose entitlements when they exercise their free movement rights.

It is possible, however, for Member States to restrict access to social benefits for EU migrants in certain circumstances. In 2014 the European Court of Justice **ruled** that economically inactive EU citizens who go to another Member State solely in order to obtain social assistance may be excluded from certain social benefits.

## **Immigration to the UK and Wales**

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The **current estimate** is that there are around 1.2 million British migrants living in other EU countries, compared with around 3.0 million EU migrants living in the UK. There are currently about 67,000 people living in Wales who have another EU nationality, and 80,000 who were born elsewhere in the EU. In terms of non-EU immigration, there are about 52,000 non-EU nationals living in Wales, and 100,000 people born outside of the EU.

The UK's migrant population is concentrated in London. Around 37% of people living in the UK who were born abroad live in the capital city.

## **UK competence; devolved interest**

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Legislative competence for immigration is not devolved to the Assembly. Therefore, decisions over future immigration policy, both during the negotiation process and on withdrawal from the UK, would be a matter for the UK Government rather than the Welsh Government. However, there is a Welsh interest in the policy position taken by the UK Government on migration, particularly from the perspective of the effect of policy decisions levels on migration in Wales, and any impact this may have on the delivery of devolved public services in Wales.

## **Impact on Welsh public services**

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The Wales Public Services paper, **Implications of Brexit on Public Services in Wales**, raises a number of issues relating to how changes in migration rules, following the departure of the UK from the EU, may impact upon Welsh public services. These include:

- Wales has previously filled staffing gaps across the NHS by employing doctors and nurses from across the EU;
- The social care sector is particularly reliant on migrants, particularly from eastern Europe, who work for relatively low wages;
- EU citizens working elsewhere in public services in Wales.

Elsewhere, the Wales Public Services paper notes that the net impact of EU immigrants on public services – that is, whether they pay more or less in taxes than the value of public services they use - remains highly contested.

There may also be implications in terms of UK citizens (many elderly) currently resident overseas who return to the UK and require significant use of public services.

## **The Republic of Ireland and the UK**

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If the UK ceases to be a Member State, it will share a land border with the EU in the shape of the Northern Ireland/Republic of Ireland border. Future arrangements for movement between the Republic of Ireland and the UK would obviously be of huge importance to Northern Ireland, but also to a lesser extent to Wales, which has a number of sea links between the two countries.



Irish and UK citizens enjoy free movement between Ireland and the UK, under the Common Travel Area (CTA) arrangements in place between both jurisdictions. Irish citizens have never faced immigration or passport controls with the UK. Irish citizens are considered 'non foreign aliens' under UK law, a status provided to no other nationality, reflecting the special relationship between both countries.

The Joint Committee on EU Affairs of the House of the Oireachtas (Irish parliament) has **stated** that:

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*UK withdrawal from the EU may have unintended and unwelcome aspects for Ireland and the UK that may adversely impact on the traditional, reciprocal freedom of movement arrangements enjoyed by Irish and UK citizens between jurisdictions.*

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The Committee urged that retaining the Common Travel Area (CTA) between Ireland and the UK should be a 'key objective' for a future UK-EU relationship. Of course, this issue will be less of a priority should the UK opt for one of the models of a future relationship with the EU that maintains the free movement of persons within the EU and UK.

### **Will leaving the EU make a difference?**

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As explained in **Section 4** ('Alternative models to EU membership'), a number of countries outside of the EU – such as those in the European Economic Area – must accept the free movement of persons as a condition of their access to the Single Market. This means that – depending on the nature of the UK's withdrawal negotiations – the UK outside of the EU may have to accept the free movement of people within the EU in much the same way as it does now. This may of course not be the sort of model that the UK Government will choose: but immigration will be a key factor in dictating the shape that future UK-EU negotiations take.



## 7. EU Funding and access to European Investment Bank

### Background

Wales is currently eligible for and receives a considerable amount of funding from the EU. A number of these have already been mentioned in this paper, but to recap, these include:

- **Structural Funds:** under the 2014-2020 round Wales has been allocated almost £2 billion from the EU - with £1.6 billion going to West Wales and the Valleys and over £325 million to East Wales.
- **CAP:** under the 2014-2020 round Wales receives around £250 million of funding per annum in direct payments to farmers in addition to €655 million for its 2014-2020 rural development programme
- **Horizon 2020:** the EU's programme to support R&D and innovation. During the 2007-2013 round, Wales received over €140 million from FP7, the predecessor funding stream for research and innovation. The Welsh Government is aiming to increase the uptake of Horizon 2020 funding under the current round. In 2014 Welsh projects received approximately £12 million from this fund
- **Erasmus+:** the EU's programme to support mobility in the field of education and training.

Budgetary allocations for these funding streams are made in the context of the EU's **Multiannual Financial Framework (MFF)**. The current MFF runs from 2014-2020. The MFF lays down the maximum annual amounts ('ceilings') which the EU may spend in different political fields ('headings') over a period of no less than 5 years. The MFF 2014-20 will be reviewed by the European Commission in 2016, taking account of the economic situation as well as the latest macroeconomic projections.

The Welsh Government is responsible for implementing the Structural Funds and CAP in Wales. It is also responsible for promoting engagement with EU funding streams across Wales.

During the Fourth Assembly the Minister for Natural Resources had overall responsibility for CAP and the Common Fisheries Policy (CFP) in Wales, although in practice the Deputy Minister for Farming and Food was responsible for the implementation of the Common Agricultural Policy in Wales, including the Rural Development Programme. Within the new Welsh Government announced in May the Cabinet Secretary for Environment and Rural Affairs will be responsible for CAP payments within Wales.

During the Fourth Assembly the Minister for Finance and Government Business was responsible for implementation of EU Structural Funds in Wales, through the Wales European Funding Office (WEFO), as well as having responsibility to promote engagement with EU programmes and finance across government departments. The previous Minister for Finance, in response to the **EU Funding Opportunities 2014-2020** inquiry by the Enterprise and Business Committee appointed three external EU Funding Ambassadors to promote uptake in a number of 'centralised' EU programmes, including Horizon 2020, Erasmus+, Creative Europe, Connecting Europe, and the Territorial Co-operation Programmes. The **EU Funding Ambassador's Final Report** (published in March 2016) made a number of recommendations to strengthen the engagement by Welsh Government departments and Welsh stakeholders in the broad range of EU funding and policy opportunities available.

Under the new Welsh Government the Cabinet Secretary for Finance and Local Government will be responsible for Structural Funds in Wales and 'related programmes', with the exception of CAP/CFP.

There are a number of questions around the impact that leaving the EU will have on the access that Wales has to EU funding, including:

- What impact would leaving the EU have on Welsh participation in the current round of EU funding for 2014-2020 period?
- To what extent would UK-level funding be made available to replace the funding that currently comes from the EU, particularly for Structural Funds, CAP and fisheries, but also in other areas such as research, education, and culture?
- Would the UK be able to continue to participate in EU funding programmes after leaving the EU? If 'yes' will the UK Government wish to do this? If 'yes' in which areas? And to what extent will the Welsh Government (and Assembly) be engaged in and be able to influence the answers to these questions?

## Wales' net contribution to the EU budget

The Wales Governance Centre (WGC) has published **research** that suggests that Wales – in contrast to the UK as a whole – is a net beneficiary of EU funds. Based on estimations of the Welsh contribution to the EU budget and Welsh public sector receipts from EU funding, it concludes that Wales had a net benefit of £245 million in 2014. This could also be expressed as £79 per head, or 0.4% of estimated Welsh GDP. This situation, the WGC noted, 'differs substantially from the rest of the UK' and 'shows the potential for asymmetrical impacts across the UK of any potential vote to leave the EU'. Based on similar calculations, the UK was a net contributor of £9.8 billion in 2014, or £151 per head.

The Welsh receipts from the EU budget in this analysis only include those routed through the public sector. This covers the major two sources of funding from the EU in Wales: Structural Funds and the Common Agricultural Policy. However, it does not include funds distributed directly from the EU to beneficiaries in Wales, for example through Horizon 2020 (£12 million in 2014). Any possible impacts of leaving the EU on economic growth and general government revenue have also not been included in this analysis.

## The possible impact of leaving the EU on funding of Welsh public services

Wales Public Services (a project hosted by Cardiff University Business School looking at long-term pressures facing public services in Wales) has published a **paper** scoping out the possible impact of leaving the EU on Welsh public services. This paper models a number of possible scenarios for the impact of leaving the EU on funding of Welsh public services, whilst considering the broader impacts, such as staffing issues and public procurement.

Given the UK's status as a net contributor to the EU budget, it is conceivable that any shortfall in EU funding in Wales following the UK leaving the EU could be covered by additional funding to Wales from the UK Government. This would be a policy decision to be made by the UK Government.

## EU funding in Wales following leaving the EU

It is not necessarily the case that leaving the European Union would result in either an end to the UK contributing to the EU budget, or receiving funding from it. As discussed in the section on 'Alternative models to EU membership', countries outside of the EU that currently have a high degree of access to the Single Market (such as Norway and Switzerland) contribute to the EU budget and enjoy some level of participation in EU funding streams.

The European Economic Area Agreement ensures participation by Iceland, Liechtenstein and Norway in **a number of other EU programmes**, including Horizon 2020 (research and innovation) and

Erasmus + (education and training). Although EEA members are not generally eligible for European Structural Funding, Norway and Liechtenstein qualify for **some cross-border and transnational programmes**. No non-EU countries are currently part of the CAP. Fundamentally, the UK's future access to EU funding programmes – both for the current programming period (2014-2020) and beyond - will be subject to negotiations during the withdrawal process.

## European Investment Bank

The European Investment Bank (EIB) is the European Union's bank, owned by and representing the interests of the Member States. The UK owns a **16% share**: the same as Italy, France and Germany. Although the EIB does invest outside of the EU, 90% of loans are made within the Union.

The EIB has invested in the four countries of the European Free Trade Area (Norway, Iceland, Liechtenstein and Switzerland) since the establishment of the EIB EFTA Loan Facility in 1994. Projects in which the EIB is involved in the EFTA states are financed from the EIB's own resources. They have to meet the same eligibility criteria and follow the same procedures as those within the European Union.

Over the previous decade the EIB has directly invested nearly £2 billion in Wales. This is in addition to EIB investment in UK-wide programmes, which may involve a Welsh dimension. In 2015 the EIB lent £5.6 billion in the UK, which it estimates will support a total investment of £16 billion. The EIB describes current EIB lending in the UK as being 'at record levels and supporting a more diverse range of projects than many other EU countries'.

Following a departure from the EU, legal obligations concerning EIB loans already agreed in the UK would not change. However, the UK's relationship with the EIB and future EIB operations in the UK is one of the issues that will need to be discussed during the withdrawal process.

EIB lending in the UK and the UK's place in the EIB shareholder structure will need to be discussed and decided by EU Member States, including the EIB Board of Governors and Europe's finance ministers. Article 308 of the TFEU states:

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*The members of the European Investment Bank shall be the Member States.*

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This is reiterated in Article 3 of Protocol No.5 (on the Statute of the European Investment Bank) of the TFEU. Leaving the EU, therefore, without Treaty change, would mean the UK would no longer be a member of the EIB.

The EIB is another source of finance to which organisations in Wales are eligible to apply for support. A number of projects were successful during the Fourth Assembly including, the **Science and Innovation Bay Campus at Swansea University**, officially opened in October 2015, which received €60m investment from the EIB. The Welsh Government submitted a **number of project ideas** for support under the **European Fund for Structural Investment**, managed by the EIB, during 2015, including the South Wales Metro project.

# Annex 1: Welsh representation and participation at EU level

## EU Institutions and Consultative Bodies

### At EU level:

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- Four Welsh Members of the European Parliament (MEPs)
- Four Welsh representatives on the Committee of the Regions
- Three Welsh representatives on the European Economic and Social Committee
- UK European Commissioner (currently Lord Jonathan Hill)
- Officials in the EU Institutions (including seconded experts from Welsh Government – and other UK bodies)

### In Wales/UK:

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- European Commission Representation to the UK: main headquarters in London including a dedicated Wales Office in Cardiff (currently headed by David Hughes).
- European Parliament Representation to the UK: main headquarters in London. There is currently no dedicated office in Wales

### Wales House in Brussels:

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- National Assembly for Wales EU Office
- Welsh Government EU Office
- Welsh Local Government Association (WLGA) EU Office
- Welsh Higher Education Brussels (WHEB) Office

### EU networks (not exhaustive)

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- Conference of Regions with Legislative Assemblies (CALRE): National Assembly for Wales
- Committee of the Regions Subsidiarity Monitoring Platform: National Assembly for Wales
- Committee of the Regions Subsidiarity Expert Group: National Assembly for Wales
- EC-UK Forum: National Assembly for Wales
- Conference of Peripheral and Maritime Regions (CPMR): Welsh Government
- European Regions for Research and Innovation (ERRIN): Welsh Government and WHEB
- Smart Specialisation Network: Welsh Government and WHEB
- Conference of European Municipalities and Regions (CEMR): WLGA
- Eurochild: Children in Wales
- VANGUARD: Welsh Government
- European Association of Regions and local authorities for Lifelong Learning (EARLALL): Welsh Government and Colegau Cymru

- GM Network: Welsh Government
- Conference of European Regions with legislative powers (REGLEG): Welsh Government
- Network of Regional Governments for Sustainable Development (NRG4SD): Welsh Government
- Four Motors: Welsh Government
- Network for Linguistic Diversity: Welsh Government
- Regions for Culture: Welsh Government
- Cine Regions: Ffilm Cymru Wales
- Culture Action Europe: Arts Council for Wales
- IETM: Arts Council for Wales
- Euregha (Regional and Local Health Authorities): Welsh Government
- European Innovation Partnership on Active and Healthy Ageing: Welsh Government and Older People's Commission for Wales
- European Network of National Civil Society: Welsh Council for Voluntary Action (WCVA)

## Annex 2: Sources and further reading

### European Union

- **Europa website:** information about the EU, its history, its institutions etc.
- **Europa website:** pages explaining EU law and decision-making
- **Treaty on European Union (TEU)**
- **Treaty on the Functioning of the European Union (TFEU)**
- **European Commission at work:** pages explaining role of the European Commission, its political priorities, the annual Work Programme cycle
- **European Parliament explained:** pages on the powers, organisational structure, and history of the European Parliament
- **Council of the European Union explained**
- **European Court of Justice**
- **European Court of Auditors**
- **European Investment Bank**
- **Committee of the Regions**
- **European Economic and Social Committee**
- **Presidency of the Council of the European Union**
- **Multi-annual financial framework (MFF)**
- **EU trade agreements - full map of the countries**

### UK Government

- UK Government, **Review of the Balance of Competences** (December 2014)
- UK Government, **Alternatives to membership: possible models for the UK outside the EU** (March 2016)

### Reports by UK Parliament/devolved legislatures

- National Assembly for Wales, **Europe Matters** (regular publications)
- House of Lords: EU Scrutiny Committee, **Visions of EU Reform** (March 2016)
- House of Lords European Union Committee, **The process of withdrawing from the European Union** (May 2016)
- House of Commons Library, **EU referendum: impact of an EU exit in key UK policy areas** (February 2016)
- House of Commons Library, **EU referendum: UK proposals, legal impact of an exit and alternatives to membership** (February 2016)
- House of Commons Library, **Leaving the EU: How might people currently exercising free movement rights be affected?** (March 2016)

- House of Commons Library, **EU Referendum: the process of leaving the EU** (April 2016)
- House of Commons Library, **EU external agreements: EU and UK procedures** (March 2016)
- House of Commons Library, **Reading list on UK-EU relations 2013-16: reform, renegotiation, withdrawal** (April 2016)
- Scottish Parliament: European and External Relations Committee, **The impact of EU membership in Scotland** (October 2015)
- Scottish Parliament: European and External Relations Committee, **The European Convention on Human Rights in the United Kingdom** (September 2015)
- Northern Ireland Assembly, **The EU Referendum and Northern Ireland: Information Resources** (March 2016)
- Northern Ireland Assembly, **The EU referendum and potential implications for Northern Ireland** (January 2016)

### Academic sources and think tanks

- King's College London, Economic and Social Research Council, **The UK in a Changing Europe**
- London School of Economics and Political Science, **BrexitVote**
- Civitas - **The Eurosceptic's Handbook: 50 live issues in the Brexit debate** (May 2016)
- Federation of Small Business – **EU Referendum campaigns answer top small business questions** (May 2016)
- Institute for Fiscal Studies, **Brexit and the UK's Public Finances** (May 2016)
- National Institute of Economic and Social Research - **The long-term macroeconomic effects of lower migration to the UK** (May 2016)
- Institute for Public Policy Research **Free movement and the EU referendum** (March 2016)
- Regents University, **The UK and the EU: Are there Alternatives to EU Membership?** (January 2015)
- New Statesman, **The rise of the Anglosphere: how the right dreamed up a new conservative world order** (February 2015)
- Confederation of British Industry, **No alternative to EU membership offers better balance of pros and cons** (November 2013)
- Confederation of British Industry, **Two Futures (2016 EU report)** (April 2016)
- Lexology, **How Brexit will affect procurement issues** (May 2016)
- Centre on Constitutional Change, **British withdrawal from the EU: an existential threat to the United Kingdom?** (May 2016)
- Centre for Economics and Business Research, **British Jobs and the Single Market** (March 2014)
- Wales Public Services, **Implications of Brexit on Public Services in Wales** (May 2016)
- Wales Governance Centre, **Wales and the EU Referendum: Estimating Wales' Net Contribution to the European Union** (May 2016)



- Wales Governance Centre, **Wales and the EU Hub** (a variety of briefings/papers on Wales and the EU)

## Ireland

- King's College London, Economic and Social Research Council, **Why Ireland wants the UK to remain in the EU** (March 2016)
- London School of Economics and Political Science, **A British departure would have major consequences for Ireland, both North and South** (March 2016)
- Institute of International and European Affairs (Ireland), **Brexit: What Happens Next?** (May 2016)
- Economic and Social Research Institute (Ireland), **Scoping the Possible Economic Implications of Brexit on Ireland** (November 2015)
- Irish Government News Service, **Speech by the Taoiseach, Mr Enda Kenny TD at the Bloomberg Conference on the Implications of Brexit for Ireland** (May 2016)
- Irish Government News Service, **Minister Murphy says European partners highly value the UK's role within the EU** (May 2016)
- Discussion for Oireachtas Foreign Affairs EU Committee, **What happens to North-South relations, and cross-border relations, in the event of British exit from the EU?** (April 2015)
- Joint Committee on European Union Affairs, **UK/EU Future Relationship: Implications for Ireland** (June 2015)