



# Charity Finance Group Policy Briefing

## Potential impact of Brexit on UK charities

May 2016

### About CFG

Founded in 1987, Charity Finance Group (CFG) is the charity that works to improve the financial leadership of charities, promote best practice, inspire change and help organisations to make the most out of their money so they can deliver the biggest possible impact for beneficiaries. CFG has over 1400 members and they manage nearly £20 billion in charitable income. Its members work at the heart of the strategic development of their organisations, and are at the forefront of delivering sustainable and efficient charity sector.

## Briefing Overview

Britain's membership of the European Union has implications for charities' operations. For example, charities, like other employers, are beholden to employment laws, accounting and reporting requirements, data protection legislation and tax rules that are derived from the EU.

The EU referendum presents a number of unknowns for the charity sector. This briefing provides a technical analysis of the possible financial and regulatory consequences for the charity sector in the result of a British exit (Brexit) vote in the EU referendum on the 23 June.

This briefing covers:

- Employment law and HR
- Pensions law
- EU funding for charities
- Procurement
- VAT and tax
- Accounting and reporting
- Data protection
- International Development
- Issues for charities in devolved nations

CFG's corporate subscribers have also provided their expert analysis throughout.

*It must be noted that this briefing does not provide an argument for or against whether Britain should remain within the EU. **CFG has no position on the EU referendum.***

## Introduction to the EU Referendum

On 23 June the UK will vote on whether or not they want to remain within the European Union.

If the UK does vote to leave there will be at least a two-year negotiation period as set out in Article 50 of the Lisbon Treaty. During this time EU laws will still be applicable in the UK. Therefore, in the short term, there will be little tangible difference to the way charities operate.

However there continues to be a great deal of uncertainty about what impact a Brexit will have in the UK in the long term.

Given the highly unprecedented nature of this political event, we advise charities to begin thinking as soon as possible about what a Brexit could mean for their operations. This briefing aims to assist in this preparation.

The focus of this briefing is the operations of charities, as organisations which are subject to EU regulations, directives, decisions and recommendations as well as recipients of EU funding.

It is not the aim of this briefing to estimate any implications for charity beneficiaries. Given the diversity of the sector, such an estimate would only be partial. It is the responsibility of individual charities to make their own assessments.

## Legal framework of the EU

The EU uses several types of legal acts to enforce its aims (which are defined in EU treaties). Below is a glossary of the different legal acts:

- **Regulations:** A binding legislative act and must be applied in its entirety across the EU.
- **Directives:** A legislative act that sets out a goal that all EU member states must achieve. Each country can devise their own laws to reach these goals.
- **Decisions:** A decision is binding for whom it is addressed, e.g. an EU company or an individual company and is directly applicable.
- **Recommendations:** These are not binding and there are no legal consequences if a country does not introduce the recommendations.

## Types of exit

If Britain votes to leave the EU there is a great deal of uncertainty over the impact this will have on the UK.

Much of the outcome will depend on the result of negotiations between the British Government and the European Commission and the policy decisions made by the government following Brexit.

Whilst there has been widespread speculation over what this possible agreement will look like, the government has not publicly declared their preferred option. As such, we are still left to speculate what a Brexit will mean for our economy, society and the charity sector.

As it stands, there are four different ways that experts have suggested the UK could interact with the EU.

- 1) The “Norwegian” model – in which the UK would remain in European Economic Area (EEA)/European Free Trade Association (EFTA) allowing free movement of persons, goods, services and capital within EU markets but would not afford the UK representation in the Institutions of the European Union.
- 2) The “Swiss model” – in which the UK would remain in the EFTA where certain goods, persons and services are in a EU-Swiss free trade zone, but again there would be no representation in the Institutions of the European Union.
- 3) The “Turkish model” – this would allow the UK to join the EU Customs Union (EUCU) where no duties are imposed on goods and services within the union.
- 4) The “British model” – Some other model yet to be defined. It is widely speculated to involve a bilateral agreement.

For charities, the most important factor in any model is the level of regulatory coherence required by the European Union. A relationship along the lines of the Norwegian model could see the UK continue to follow a large amount of EU regulation. A looser arrangement, closer to the Turkish model, would give the UK more regulatory flexibility and could lead to significant changes.

If the result of the referendum does lead to a Brexit it is important to note that experts believe it will take at least two years before an official exit date is decided, followed by years of negotiations over existing legislation. In the event of a Brexit vote, charities should be prepared for a period of uncertainty while negotiations over an agreement are reached.

## Brexit: implications for UK charities

### Employment Law

How much employment law will change over the next few years is unknown. Furthermore, EU employment legislation has become harder to introduce as the EU expands. The centrepiece of the UK’s employment legislation is the Employment Rights Act 1996 which is supplemented by other pieces of UK legislation.

While some important EU laws have been introduced to the UK via Parliament; it is unclear how quickly employment legislation would change in the event of a Brexit. This will depend on the policy choices made by the government.

Not all established employment law in Britain has been driven by the EU as illustrated in the table below:

Employment rights derived from the EU	Employment rights derived from the UK
The Transfer of Undertakings (Protection of Employment) Regulations 2006	Gender pay gap reporting
Rights to holiday, rest breaks and the 48-hour working week	Race and disability discrimination laws
Right to be consulted on collective redundancy	The right of return from maternity leave and greater maternity and paternity cover than most of the EU
Maternity provisions	Unfair dismissal
Paternity Leave	Trade Union Bill
Insolvency protection	Right to a minimum wage
Competition law	Agency workers opt-out

In other areas, UK law has gone further than the initial EU directive; notable examples including maternity pay and paternity leave.

However, any potential reform/removal of established workplace protection (e.g. the Working Time Directive) would depend on the priorities and policies of the government of the day, creating uncertainty.

If the UK negotiates a Brexit relationship based on the EEA model then EU employment law allowing freedom of movement will inevitably be kept to satisfy remaining EU member states. Charities with employees working in the EU, or working in the UK from the EU, would also have to prepare for the possibility of visa requirements if the UK did not negotiate an open borders agreement. This could also involve additional costs for cross-border operations.

“Citizens of the EU would lose their automatic right to live, work and study here. It is possible that interim arrangements will allow for people to stay here temporarily. A points-based immigration system may rank EU citizens alongside those from outside the EU when applying for work and study places.

The changes which employers see on a Brexit will to a large extent be affected by any EU trade deal to which the UK signs up. It is also quite likely that agreeing to the principle of free movement of people and the EU's social and employment regulations would be part of any deal allowing the UK access to the EU marketplace, as is the case with European Free Trade Association countries such as Norway, Iceland and Liechtenstein.”

**Dr John McMullen, Partner, Wrigleys Solicitors LLP**

“While a large number of our existing employment laws have originated from the European Union, many of them have been re-drafted slightly to suit the UK. Clearly, some laws have been created domestically, either via Parliament or through the Employment Tribunal system.

Exiting from Europe wouldn't necessarily result in our existing employment laws being re-drafted or removed. However, in time, successive governments may find it easier to implement new laws – or to ignore what is happening in other European countries with regard to law changes there.

That being said, we wouldn't expect to see immediate changes to our existing laws. The one noticeable change would be that the Supreme High Court would become the final stage of employment appeals and the European Court of Appeal would not provide employees with an additional level of appeal in the event of a Brexit. However, this may not necessarily be an immediate change.”

**Neil Finlayson, Head of Not for Profit at Kingston Smith**

“Many pieces of legislation originally came to be part of the UK employment law landscape because their enactment was required under an EU Directive - examples include TUPE, collective consultation, fixed term employee, part time and agency worker protection, working time and many elements of discrimination legislation. However there are many reasons to doubt that a 'leave' vote would lead to an extensive unpicking of this now-established framework.

Many pieces of domestic legislation actually go significantly further than is required by the relevant EU Directive in any case. Obvious examples here include much 'family friendly' legislation and the 'service provision' elements of TUPE. These laws have become normalised in UK workplaces, being largely regarded as minimum acceptable standards of treatment. It is likely to be politically unacceptable to embark on widespread repeal.

Even if the UK were to leave the EU, some other arrangement would need to be put in place in order to retain access to EU markets. It is highly likely that any alternative model would require the UK to continue to observe similar levels of worker protection to those currently in existence. Perhaps more likely is the potential for impact on the free movement of workers and it may become necessary for employers to review the immigration status of those they engage. However, even if there are legislative changes, the pace of any change is likely to be slow given that the timescale for negotiating a new model is likely to be measured in years, not months.

**Louise McCartney, Senior Associate, Bates Wells Braithwaite**

## Equality laws and access to EU courts

While charities may face changes to their finance and governance if a Brexit occurs, other areas for charities to consider are:

- **Equality legislation in employment law.** Many charities work to fight discrimination and removal of EU law protecting equality could, potentially, be a real risk to many charities that support and advocate for disadvantaged people and causes.
- **Protections for beneficiaries.** Charities that rely on EU law to protect their beneficiaries could be impacted, although this would depend on the policy choices made by the UK Government.

As the UK remains a signatory for both the European Court of Human Rights and the International Criminal Court charities would still have access to them. While both are based in EU member states (France and The Netherlands respectively) they are separate bodies that do not require EU membership.

## Pensions Law

The majority of pensions law derived from the EU has been centralised into UK domestic law. Notable examples include:

- Equal treatment provisions (Equality Act 2010)
- Scheme specific funding provisions in the Pensions Act 2004

As such, charities should consider the medium-to-long term changes in pensions legislation, as any short-term changes are likely to be minimal, if any indeed are introduced.

Pensions experts consider it unlikely that a British government outside of the EU would move away from any pensions legislation that provided protection for pension scheme. Especially in the context of auto-enrolment through which the government is seeking to ensure that all employees are saving for their retirement.

It is worth charities considering that pension scheme trustees may begin to consider how a Brexit could impact on the financial sustainability of employers, and may ask for a covenant reassessment if they think there is a significant risk of the UK voting to leave the EU.

Both charity trustees and the trustees of pension's funds should assess what impact Brexit could have on the financial strength of the charity as a sponsoring organisation. In terms of investments, experts have warned that the reliance of UK schemes on UK markets will leave funds vulnerable post-Brexit. Pension funds' current investments and investment strategies should therefore be assessed.

## EU funding for charities

The EU is the source of significant funding opportunities for the charity sector, although there is some criticism that this funding is often limited to larger charities.

Using data from the EU's Financial Transparency system, Britain Stronger in Europe estimated that 249 UK charities and other public benefit organisations received over £200 million in EU funding in 2014. According to the National Council for Voluntary Organisation's Civil Society Almanac 2016, the total amount of income received by charities in 2013/14 was £43.8 billion including both contracts and grants.

Under the current EU membership, charities can access various funds:

- European Structural and Investment Fund (ESIF) - (<http://bit.ly/esifgov>)
- European Regional Development Fund (ERDF) - (<http://bit.ly/erdfgov>)
- European Aid to the most Deprived (FEAD) - (<http://bit.ly/feadgov>)
- European Social Fund (ESF) - (<http://bit.ly/esfgovuk>)
- Youth Employment Initiative (YEI) - (<http://bit.ly/yeiec>)

As the ESIF covers the period of 2014-2020, it is unknown whether the estimated €14 billion would still be available for charities if Brexit occurred. 20% of the European Social Fund is protected for projects that develop social inclusion, many charities are involved in the delivery of these projects and exiting the EU would create uncertainty for them.

It should also be noted that Brexit, in and of itself, may not lead to the loss of funding for these projects. A post-Brexit government may choose to continue funding these projects (or increase/reduce funding) going forward. However charities engaged in EU funded projects should review their financial plans accordingly to make sure that they are taking into account relevant risks.

“UK charities could lose access to grants available through the European Social Fund and the European Regional Development Fund. Even if these funds are not lost, a decision to leave the EU would inevitably trigger a need to relook at application processes and timescales needed from initial application to allocation of funding.

Should Brexit impede the ability of many charities to access European grants via the European Social Fund and the European Regional Development Fund this could have a direct impact on the levels of reserves that a charity needs to hold; at least whilst the uncertainties exist. Trustees will also have to consider if this uncertainty gives rise to a “principal risk” that needs to be included in the Annual Report.

The actual evidence to back up these concerns is of course questionable and whilst there are clearly no guarantees whether we stay or leave the EU, what is clear is that the uncertainties will inevitably pose a challenge for those organisations trying to establish strategic plans beyond grant funding commitments already in place.”

**Fiona Condon, Director, BDO**

## Procurement

Much of the UK public procurement laws are regulated by EU regulation (e.g. State Aid regulation), directives (e.g. Public Sector: Directive 2014/24/EU) and UK regulation (e.g. The Public Contracts Regulations 2015) that implements the directives in the UK.

Under the 2007 Treaty on the Functioning of the European Union (<http://bit.ly/tfeu2007>) the rules on public procurement and state aid are designed to promote fair competition and are underpinned by the principles of transparency, non-discrimination and equal treatment.

A Brexit might result in the loss of being able to use Tenders Electronic Daily (TED) (<http://bit.ly/TEDEU>) - the online tool provided by the EU where public procurement contracts are advertised. This may create additional costs in seeking to find relevant contracts, although a similar portal may be created by a post-exit British government.

Between 2009 and 2011, the UK awarded 1.3% of public contracts to suppliers based in other Member States, third lowest for all EU states. In the same time period, only 0.8% of public contracts in the EU were secured by UK suppliers.

These low figures show that charities who are engaged with public procurement contracts have limited interaction with other EU member states, both within the UK and the rest of the EU. Therefore, it is unlikely that a Brexit would significantly affect bidding landscape for charities.

Under the EU Public Contracts Directive (<http://bit.ly/pcdgov>) the EU has attempted to encourage participation in procurement contracts by increasing the limit for ‘light touch’ contracts from €200,000 to €750,000. It is not clear at present whether a post-Brexit government would keep this regime or amend it.



A number of attempts have been made by the European Union to support more socially and environmentally conscious procurement. The latest EU Public Procurement Regulations have enabled member states to break down contracts into smaller lots to make it easier for small and medium organisations to bid for them. This has been combined with replacing an emphasis on contracts that help to deliver social and environmental objectives.

A new procedure to encourage innovative partnerships between the bidder and the local authority has been promoted by the EU. This could be beneficial for charities. However, some of the new EU changes have already been covered under the UK Public Services (Social Value) Act 2012 (<http://bit.ly/svagov>).

If the UK agrees an exit on the Norwegian EEA or Swiss model the UK would still have to abide by EU public procurement law and state aid regulation. Alternatively, if the UK and EU sign a bilateral agreement based on the World Trade Organisation's General Procurement Agreement (<http://bit.ly/gpawto>), UK charities could potentially have the right to bid, but will not have to meet the sometimes complicated requirements of EU public procurement and state aid legislation.

However at this stage of the process, it is simply not clear what the future of procurement will be. Depending on the agreement made by the post-Brexit government with the EU, there may be greater flexibility for the UK to set its own procurement rules. But it is not yet evident whether these would reduce, increase or maintain the level of regulation that charities face.

It is also not clear whether social, environmental or economic factors in procurement would be maintained, enhanced or reduced.

Charities will need to monitor any post-Brexit government carefully and be ready to adapt to changes in procurement law.

“So what might a Brexit mean for charities’ procurement procedures? In short, not much.

Many third-sector organisations, including charities, are also “contracting authorities” and must comply with the EU procurement rules when undertaking purchasing activity. It might be thought that on ceasing to be a member state of the EU, the UK would leave behind a regime often considered by many to be burdensome and restrictive, and that contracting authorities would be left with a much-increased freedom to buy as the mood dictated.

Right? Wrong. It is certainly true that the particular procurement legislation which applies now may, in the fullness of time, change. But the change would not happen overnight and, when it did, might not be as radical as first imagined.

For a start, our existing EU-derived procurement rules would remain in place, unless the Government decided to change them.

Second, it would be likely to take at least two years for the UK to negotiate its path out of the Union – and so it would be some time before we were able to change the rules, even if (as a non-member state) we wanted to.

Third, as a nation we would need to remain a key player on the world economic stage and so it is likely that we would continue to do so by being part of international trading arrangements such as the World Trade Organisation (WTO) or the European Economic Area (EEA) – the former would expect us to become part of the WTO Government Procurement Agreement (which shares the key features of the EU procurement regime), and the latter would involve no change to the procurement *status quo* in any event. Other (newer) arrangements to which the UK might sign up – such as a Transatlantic Trade and Investment Partnership (TTIP) with the USA – would be more than likely to contain procurement provisions of their own, and ones which would mirror the existing regime in many respects.

None of us, therefore, should be holding our breath for a radical shift in the regulatory landscape in this area.”

**Chris Brennan, Consultant, Mills & Reeve**

## VAT and Tax

Tax and VAT have a big impact on the UK charity sector. The charity sector benefits from billions of tax reliefs and VAT exemptions. However, these are not without cost. Irrecoverable VAT is estimated to cost UK charities at least £1bn a year. VAT is likely to be the tax most impacted by any decision to leave the EU.

If the UK votes to remain in the EU in June, charities should be aware of the EU’s Action Plan on VAT (<http://bit.ly/VAT2020>) which aims to create a single VAT area for Europe. The

most significant potential impact on charities is the possible change to charity zero rate relief tax.

Currently, the EU prescribes a list of goods and services that can be charged at a zero rate of VAT and it is currently very difficult for member states to be able to add items onto this list. A zero rate of VAT allows a charity to charge no VAT on certain products and services offered to customers and allows a charity to recoup the VAT it paid itself.

The EU has suggested under its Action Plan on VAT proposals (to be presented to the European Commission by 2017) to either remove the current list of set VAT rates or to give member states more control over the products and services they want to add and remove.

This could have two possible impacts, if the EU decides to change the status quo:

- 1) Charities can lobby more easily for more services to be given a zero VAT rate.
- 2) The ease of removing the current zero VAT relief could see charities losing a number of established reliefs.

In terms of other tax issues - it is important to note that reliefs such as Gift Aid and exemptions from Corporation Tax are not subject to EU rules and are likely to be maintained should the UK leave the European Union.

That being said, leaving the EU may have an impact on any tax reliefs that UK charities receive in EU countries, following recent legal decisions. Leaving the EU would, however, give the UK government more flexibility on how it wished to set the tax. Charities would need to be prepared to engage with any post-Brexit government to ensure that reliefs were maintained.

“The potential tax implications for charities, if we vote to leave the EU, requires crystal ball gazing - but there are clear areas where tax issues could emerge from changes in the VAT regime, cross border donations and therefore the application of gift aid.

The current definition of “charity” for UK tax purposes was amended in Finance Act 2010 to include EU established charities where certain conditions are met. This amendment came about as a result of infraction proceedings brought against the UK government following various European Court of Justice cases regarding the tax deductibility of cross border charitable donations.”

**Fiona Condon, Director, BDO**

“A vote in favour of Brexit is unlikely to result in any immediate changes to indirect tax law, practices and policy, but in the long term, changes would be likely to VAT, Customs Duty and Excise Duty. If there is a vote in favour of Brexit, EU law considerations might have less impact, though taxpayers will still be able to rely on the “direct effect” of EU law until the secession process is complete, and potentially afterwards in relation to “pre-secession” transactions.

VAT could be materially affected by secession from the EU. Freed from the need to comply with EU VAT law, it is possible that the UK would decide on a wholesale review of the scope and coverage of VAT. In theory, the UK could even replace it altogether, possibly with a goods and services tax, a sales tax of some kind or even something like the UK’s old purchase tax – collected at the wholesale stage. However given the global trend towards VAT as the indirect tax system of choice, such a radical change seems unlikely and so VAT in some form is likely to stay with us even if the UK leaves the EU.

With effect from the date of secession, taxpayers will no longer be able to rely on the “direct effect” of EU laws and the EU approach to the interpretation of UK VAT law may be less widely applied. The UK courts would revert to interpreting UK VAT provisions and might have little regard to decisions emerging from the European Court though UK VAT law will still have its roots in EU law, and that makes it unlikely that future CJEU case law will simply be ignored by the courts and tribunals when applying UK provisions.

After Brexit the UK would no longer have to comply with EU VAT law (on rates of VAT, scope of exemptions, zero-rating, etc.) and so the UK would have more flexibility in those areas. Future governments could consider such changes as the restoration of zero-rating for domestic fuel and power and reinstatement of the VAT relief for energy saving products (changes which were enforced on the UK by the EU commission), or the widening of exemptions.

For businesses, the practicalities of cross-border transactions may change following secession. Invoicing and reporting processes could be revised for cross-border supplies and certain sectors may see major changes.

It is likely that even after secession there would be disputes between taxpayers and HMRC over transactions that predate Brexit and in those cases EU law would still be in point (with the potential for the Tribunals and courts to need to refer questions to the CJEU).”

**Linda Skilbeck, Senior Manager, SOC VAT Consultants**

“The most obvious change would be that there would, in theory, no longer be a VAT distinction between exports/imports and EU sales/purchases. All cross border sales and purchases would come under the existing exports/import rules for goods and UK/non-EU rules for services. As such Brexit would appear to represent a substantial simplification of the VAT cross-border rules.

However the full import/export procedures for goods are more onerous than the intra-EU procedures, and some simplifications for intra-EU services, such as access to the mini one stop shop for digital services, may be desirable to retain, so it seems likely the UK would try to agree a half-way house for VAT with the EU, or a transitional change so that some of the current intra-EU rules would be applied in a modified form or for a transitional period.

The European Commission has already proposed a relaxation of the VAT rules on what goods and services can be sold at a zero or reduced rates, however even if this change goes ahead, any new zero or reduced rates would have to be introduced within a regulatory framework set by the EU. If the UK leaves the EU VAT Union, it is in principle free to set whatever zero or reduced rates it likes, including potentially extending the existing zero-rating reliefs for charities, re-introducing the VAT exemption for supplies of research and so on.

However states close to the EU such as Switzerland, Norway and Iceland generally have VAT systems that map closely to the EU VAT system, with similar reliefs, exemptions and place of supply rules. This is done deliberately to facilitate free trade. It seems likely the UK will try to retain as many of the advantages of access to the EU market as possible so the UK’s VAT system would likely remain tethered to the EU VAT, albeit possibly on a longer rope.”

**Helen Elliott, Partner, Saver Vincent**

“On 27 January 2009, the European Court of Justice ruled in the case of Hein Persche vs Finanzamt Lüdenscheid. The judgment changed the basis for claiming tax relief for donations across the EU and, essentially, removed the right of EU countries to withhold tax relief simply because a charity that would otherwise qualify was based and registered in another EU country. The UK was among those EU countries that put this ruling into effect.

A Brexit may remove these pan-European rules, making donations from non-UK EU nationals to UK charities far less likely as the tax regime would be less favourable for the donor.”

**Subarna Banerjee, National head of charity and not-for-profit,  
UHY Hacker Young LLP**

“As a direct result of Brexit it is difficult to think of any real tax consequences for charities. The one piece of legislation deriving from the EU is the definition of a charity for tax purposes that resulted from an ECJ case that forced member states to give the same reliefs to EU charities as to national charities. The UK extended this to EEA charities i.e. EU, Norway, Iceland and Lichtenstein but I am not aware of many (if any) charities that get much benefit from this. However, VAT may be a more productive area given that it is largely an EU tax.”

**Nick Sladden, National Head of Charities, RSM UK**

## Accounting and Reporting

Most accounting legislation used in the UK is based on an international system. However, there is a possibility that the UK could set its own reporting standards to make the UK more competitive in an international market. This may help charities that operate outside of the Eurozone as they might benefit from greater levels of regulatory freedom.

One of the main differences that could affect charities is the differing laws and rates for international money transfers. While the UK is not in the Eurozone, the ability to transfer currency effectively and efficiently will still remain crucial for charities that work within the EU.

The ease of transfer of currency will also be dependent on what type of model the UK negotiates if Brexit occurs. The UK could possibly benefit from the potential ability to make bilateral agreements with new and emerging markets, outside of EU regulations. This might present greater opportunities to UK charities that are based in these regions.

“There is some debate over what will happen to the value of Sterling, both in the short and long term, in the event of a Brexit. This could have a number of possible impacts on charities:

- Charities with expenditure commitments in foreign currencies, e.g. overseas aid work, often costed in US dollars or Euros will become more expensive if Sterling falls and, thus, currency hedging may move back up the agenda for such charities.
- Charities with income in foreign currencies. Given that the pound is generally expected to weaken, they could actually benefit as their money may stretch further if their expenditure is in Sterling.
- Charities with investment portfolios, especially those with overseas investments. The uncertainty alone will particularly hit charities operating a total return model and others which are less able to ride out any short term volatility.”

**Subarna Banerjee, National head of charity and not-for-profit,  
UHY Hacker Young LLP**

Under the Europe 2020 Digital Single Market strategy, the EU will move to implement digital accounts to become the norm across the EU. As charities do not currently need to submit digital accounts, this policy change could require charities to have to invest in skills and software to produce digital accounts. Charities submitting accounts to either the Charity Commission and/or Companies House would be subjected to any potential regulation under the Europe 2020 Digital Single Market, if the UK remains part of the EU.

The significant cost savings likely to accrue to government agencies of the long term mean that charities need to prepare for a digital accounting future. However, if the UK was to leave the EU, there is the potential for the need for digital filing to be reduced.

Recently, the UK implemented the Common Reporting Standards (CRS) via the Automatic Exchange of Information regulation. This was agreed at an EU level following discussion by the Organisation for Economic Co-operation and Development (OECD, a think-tank that the UK is a member of). For charities the CRS regulates the collection and reporting of tax information for beneficiaries (both other charities and individuals).

As the EU has implemented the CRS charities working across the EU will find less stringent legislation in its interaction with other member states. Due to the international nature of the CRS, it will still be implemented in the UK irrespective of the referendum. However, there may be greater flexibility in some aspects for the UK if it was not subject to EU regulations implementing the CRS.

“From a tax perspective, the first thing that would be affected is VAT, as it is a tax imposed by the EU, although legislated for by national parliaments. We don’t anticipate that any Chancellor would abolish VAT, but there would be no mandatory need to abide by European directives, which impose the VAT laws.

In the 2010 Budget, the Chancellor extended the gift aid rules to allow donors to claim tax relief on their charitable donations to charities based in EU member states prompted by a 2009 European Court of Justice decision. This removed the administrative burden of EU charities having to set up a UK based charity to allow UK based donors to claim the relief. If we leave the EU, the 2009 ECJ decision will no longer be binding on the UK, so this valuable tax relief could be withdrawn or scaled back.

The one area that may be affected by Brexit is the level of influence that the UK has on various boards such as the International Accounting Standards Board - as the UK could lose its place at the table, so to speak. Some of the seats held on these boards arise as a result of EU membership, so there may need to be additional discussions in this area. From a tax perspective, Treaty Web is not affected as the UK is represented in its own capacity.”

**Neil Finlayson, Head of Not for Profit, Kingston Smith**



## Data Protection

Data protection regulation is unlikely to change irrespective of whether or not Britain votes to leave the EU. The UK's government document *Exiting the EU: impact in key UK policies areas* (<http://bit.ly/hoclgov>) states that the 1995 EU Data Protection Act will most likely not be repealed if the UK was to leave the EU.

The same document states that most countries (inside and outside the EU) now have similar legislation. This is a result of an international push towards harmonising standards to ensure the safe transfer of data across international boundaries. The new EU General Data Protection Regulation (GDPR) involved substantial involvement by the Information Commissioner's Office (ICO) - the UK body responsible for data protection.

Charities in the UK would continue to implement the current procedures and prepare for recommendations in the new EU GDPR, which will be enforced from April 2018. This will also mean that any changes to data collection in relation to fundraising will not be significantly impacted if the UK votes to leave the European Union. However, in the long term, greater flexibility could lead to increase or reduced regulation around data protection depending on the priorities of a potential post-Brexit government.

Charities would need to monitor UK legislation closely to ensure that they were compliant with any changes in data protection regulation.

The ICO has current guidance (<http://bit.ly/icocharities>) for charities and CFG will be producing a guide closer to the implementation of the GDPR.

“It is impossible to predict with equal certainty how a vote to leave the EU would impact on UK data protection law. In reality, much will depend on the nature of any trade relationships that are negotiated post-Brexit between the UK and the remaining members of the EU. For instance if the UK left the EU but was a member of the EEA it is likely that the GDPR would still be imposed on UK based companies. If however the UK did not remain part of the EEA it may have more freedom to alter and “loosen up” its data protection laws. However in this scenario, it is possible that the UK would not be deemed by the European Commission to offer adequate data protection resulting in new restrictions on the transfer of personal data from other European countries to the UK.

The Information Commissioner has said that “the UK will continue to need clear and effective data protection laws, whether or not the country remains part of the EU”. At this stage it is difficult to predict exactly what those laws will look like. However, it is clear that a vote to leave will not result in an automatic repeal of existing data protection law and it is unlikely that the UK will be in a position to depart significantly from the EU's data protection regime.”

**Mairead O'Reilly, Senior Associate, Bates Wells Braithwaite**



“In many respects, the post-Brexit legal landscape (if that is the way the Country votes on 23 June) is unknown. And it is no different when it comes to the potential consequences for data protection law in the UK.

The General Data Protection Regulation (GDPR) is due to become law in the UK in mid-2018. The GDPR is an EU regulation which imposes additional obligations on organisations which control and process personal data, including charities.

If the UK votes to leave the EU, the effect on data protection law is anyone's guess at this stage. The consequences of Brexit would depend on the relationship the UK negotiates with the EU and the rest of the world. If the UK were to remain a member of the European Economic Area (EEA), it is likely that the GDPR would still come into force. Conversely, if the UK does not stay within the EEA, it may be free to deviate from the data protection rules set by the EU.

So, to the specific question: "what effect would Brexit have on the UK's data protection law?" the answer is: it depends.

However, given the onerous obligations contained in the GDPR, we do not advocate anything other than being prepared for its implementation in early 2018. If the UK votes to leave, negotiating the UK's post-EU position and relationships will be a long process and given the importance of data protection, it seems unlikely that UK data protection law (whatever its form) will be significantly less onerous than the GDPR anyway.”

**Tony Jaffa, Partner, Foot Anstey LLP**

## Devolved nations

While most of the issues surrounding the EU and the voluntary sector will affect the whole of the UK, charities working in the devolved nations might have further issue to reflect on.

### Wales

Wales is due to receive £1.8 billion in EU Structural Funds between 2014 and 2020, which might be unavailable if a Brexit occurs. Wales will also receive €355 million between 2014 and 2020 in the EU Rural Development Plan. While this funding is mostly focused on agricultural activities, the role of the voluntary sector in rural communities is often important for providing key services and community support.

Charities (as well as businesses and the public sector) in Wales has also benefited from the potential to access a wide range of EU funding to develop other key areas:

- By 2015 Wales had already received over €35 million in Horizon 2020 funding, which is the EU Research Development and Innovation Programme and has a key focus on science, industrial and societal research.

- The Territorial Co-operation Programmes (includes Wales-Ireland Cross Border Co-operation programme worth around €100 million in EU funding. Designed to strengthen rural coastal communities by looking at innovation, climate change and sustainable development).
- Erasmus+ (supporting innovative mobility and co-operation activities in the fields of education, training, youth and sport).
- Creative Europe Programme (support for media, cultural and other creative industries).

As with the earlier comments on EU funding, any post-Brexit government may choose to increase, decrease or maintain levels of funding. However, charities in Wales engaged in projects funded by the EU should ensure that they have appropriate contingency plans in case of loss of funding and have adequate levels of reserves to maintain essential services – as per revised Charity Commission guidance on reserves.

## Scotland

Under the 1998 Scotland Act, the Scottish Government is responsible for administering the spending of EU funds in Scotland.

This includes €800 million in EU Structural Funds received between 2007 and 2013. Scotland will receive a further €985 million between 2014 and 2020, which will be matched by the Scottish Government and other public sector bodies, bringing the grand total to €1.9 billion.

Scotland has so far been very successful in the Horizon 2020 initiative, receiving 1.5% of overall funding, of which £89 million went to Higher Education Institutions and the remaining £11 million to businesses, the public sector and charities. Before the Horizon 2020 initiative, Scotland was awarded €741 million under the 7th Framework Programme (the previous programme to support research and innovation and ran from 2007 to 2013).

The Scottish Parliament is responsible for implementing any EU legislation that falls under its devolved powers. This means that if the UK leaves the EU, the Scotland Act 1998 will need to be amended to remove the requirement for the Scottish government to comply with EU law.

Again, any post-Brexit government may choose to increase, decrease or maintain levels of funding for EU-funded projects once it has discretion. However, charities in Scotland engaged in projects funded by the EU should ensure that they have appropriate contingency plans in case of loss of funding and have adequate levels of reserves to maintain essential services – as per revised regulators guidance on reserves.

## Northern Ireland

As Northern Ireland (NI) is the only country within the UK that shares a physical border with another EU country, the Republic of Ireland (RoI). This means that the EU often holds a unique position in Northern Ireland by being a facilitator between the UK, NI and the RoI in light of recent history.

The charity sector is important to Northern Ireland as the annual income of the Northern Ireland's voluntary sector is around £741.9 million, of which £70.1 million is derived from EU funding. A total of £1.2 billion will be given in EU funding to Northern Ireland between 2014 and 2020.

The EU has helped Northern Ireland's voluntary sector to support the work of the 1998 Belfast Agreement between the UK, NI and the RoI. To support this Agreement, since 1995 a total of €1.3 billion has been introduced into NI and the RoI through the European Peace and Reconciliation Fund. This fund often supports work across the UK/EU border on key projects: One notable example is the EU supported Co-operation and Working Together (CAWT) (<http://bit.ly/cawtgov>), which addresses economic and social disadvantages in border counties and is part of the EU Regional Development Fund cross border programme. The CAWT acts as a managing partner between the Departments of Health in N.I and RoI. Between 2007 and 2013 a range of programmes in NI and the RoI received £30 million in funding from the EU Regional Development Fund. EU funding is also matched by both the UK and the Republic of Ireland.

As with other devolved regions, any post-Brexit government may choose to increase, decrease or maintain levels of funding for EU-funded projects once it has discretion. However, charities in devolved countries that are engaged in projects funded by the EU should ensure that they have appropriate contingency plans in case of a loss of funding and have adequate levels of reserves to maintain essential services – as per your regulator's guidance on reserves.

## International Development

The UK has a large international development charity sector. The possibility of a Brexit on the UK's role in international development is uncertain.

According to Bond, the body that represents international development organisations, the European Union is the largest international development donor in the world. Many organisations receive substantial amounts of funding from the EU, but the process can be complex.

It is unknown whether UK international development charities would struggle to access this funding in the event of a Brexit, or whether funding relationships would be maintained. According to the Department for International Development, the total share of the EU Overseas Development Assistance Budget was £963 million in 2015.

In theory, this money could be used to fund UK international development charities or could be used for other purposes by any post-Brexit government.

## Keep in touch

If you would like to discuss any of the issues arising from the EU Referendum, please contact our Policy and Public Affairs Officer via email [heather.mcloughlin@cfg.org.uk](mailto:heather.mcloughlin@cfg.org.uk) or on 0207 871 5476.