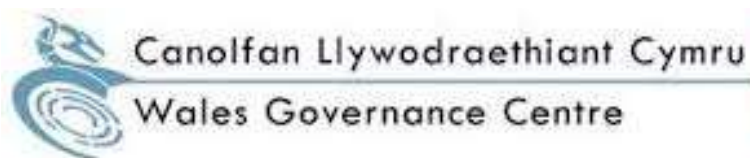




# The **UK** in a **Changing Europe**

## **WALES AND THE UK REFERENDUM ON EU MEMBERSHIP**



Canolfan Llywodraethiant Cymru  
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**These overviews are taken from a series of reports examining the implications of EU membership for Wales, and the legal and policy considerations presented by the EU referendum vote. The full set can be found at <http://sites.cardiff.ac.uk/wgc/eu/>**

**This research was produced by**

**[DR JAYNE WOOLFORD](#)**

**Research Associate, WGC, Cardiff School of Law and Politics**

**[DR JO HUNT](#)**

**Senior Fellow, UK in a Changing Europe, and Cardiff School of Law and Politics**

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# WALES AND THE UK REFERENDUM ON EU MEMBERSHIP

## Introduction

The once in a generation decision facing voters on 23 June 2016 will see the UK electorate vote on whether the UK should remain or leave the European Union. The EU is an economic and political organization formed in 1957 as the EEC – the European Economic Community. This report outlines the key issues that are raised from a Welsh perspective, whether the decision is to remain or to leave. It opens with a brief account of the EU and EU law making, and the UK and Welsh role in it, before turning to reform agreement reached in February 2016, which would underpin any continued membership of the EU. There then follows an outline of the process for withdrawal, highlighting the possible role for Wales in this process. Finally, the Report will present an overview of seven key policy areas, explaining what a vote to leave or to remain may mean for Wales legally, politically and economically. Full reports are available on the WGC site. For more information about the EU and how it works, and the issues around the referendum, visit the UK in a Changing Europe website <http://ukandeu.ac.uk/>

## The EU

Central to what was originally the EEC, and now the EU, is the single market. This is an area without internal barriers to trade amongst the participating countries, where economic activity can take place as though the participating countries are a single territory. Goods can be traded, workers can be employed and companies established across the EU on equal terms. This is achieved in part through the adoption of certain common rules across the EU, as well as an agreement to treat each other's rules as equivalent. Close cooperation and common rules (usually minimum standards) are also agreed on a range of policy areas such as the environment, consumer protection and employment law. A variety of programmes sees money redistributed across the EU from the EU budget, and this is designed to strengthen the overall EU economy. This supports a wide range of social and economic projects, infrastructure, and training, and farming, for example. The UK along with Germany, France and Italy pays in more than they receive back, but Wales is a net beneficiary from EU funding, it

receives more than it pays in. The EU also operates on the international stage, most significantly in international trade.

## Law Making

Over the decades, the EU has expanded both its membership, from an original 6 states in 1957 to 9 in 1973 with the UK, Irish and Danish accessions, to currently 28 Member States. It has also expanded its scope, in terms of the policy areas it covers. The way decisions are made has also evolved. EU law is made under the two Treaties which establish the EU - the Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU). These treaties are international agreements made between the participating states. The Treaties set the scope for action and the rules of the game, and the EU institutions can only act where they have been given powers to act under the Treaty. The institutions work together to make legislation. Laws are proposed by the EU's civil service, the European Commission, and then discussed, amended and adopted – or rejected - by the EU's two decision making bodies. These are the directly elected European Parliament and the Council of Ministers, which comprises government ministers from each country. Member States retain a veto in some politically sensitive areas, but otherwise decisions may be adopted by a majority. This means that countries could be bound by laws that they have not supported. However, in practice, decision making is usually by consensus. More recent changes have seen a new role for national parliaments in EU law making. The Welsh Assembly can and has contributed to that process, and more generally the Assembly and Government have channels to feed into EU law-making and to determining the UK Government's line. Additionally, Wales has four MEPs in the European Parliament.

## UK Opt-Outs

It should be noted that, over the years, the UK has secured a series of opt outs from the Treaty system. This means it does not participate, nor is it bound by measures or covered by laws in those areas. The UK's opt outs are more extensive than those held by any other state.

Currently under the Treaties the United Kingdom is entitled:

- not to adopt the euro and to keep the British pound (Protocol No 15),

- not to participate in the Schengen acquis and Schengen area and hence to exercise border controls on persons (Protocols No 19 and 20),

- to choose whether or not to participate in measures in the area of freedom, security and justice (Protocol No 21),

- to cease to apply a large majority of Union acts and provisions in the field of police cooperation and judicial cooperation in criminal matters (Protocol No 36),

- Protocol No 30 ensures that the Charter of Fundamental Rights of the European Union does not affect the laws and practices of the United Kingdom.

## Reform Agreement

In February 2016, the Prime Minister secured a set of commitments which take the UK's special status further. These include for the UK an end to the commitment to an 'ever closer union' between the peoples of Europe; an agreement that measures to deepen economic and monetary union are voluntary for Member States whose currency is not the euro, as well as confirmation that any future measures to safeguard the financial stability of the euro will have no budgetary responsibility for non-euro Member States. Simplification of laws and lightening the burden of regulation will be pursued as part of a deepened commitment to enhance competitiveness; and finally a set of limitations on the obligation to pay certain in-work benefits for the first four years of employment of EU workers from outside the UK.

The agreement is legally binding under international law. This means it cannot be changed without the agreement of all parties. Some elements of the agreement will need incorporating into the Treaties at the time of their next revision, whilst others will need to be brought in through the adoption of EU legislation, which will involve the input of the EU institutions, including the European Parliament.

## Opposition to Continued Membership

For some, the agreement reached in February 2016 did not go far enough. The Prime Minister had earlier announced an intention to secure a new settlement for the UK in a more flexible EU, and raised the possibility of a repatriation of powers - of bringing areas of law making back to the UK. The February settlement sees some significant compromises being made by the other Member States on key principles, particularly on the free movement of workers' principles, but these changes have not proved satisfactory to some (mainly Conservative) MPs and a proportion of the UK population. For some, continued membership of the EU is not seen to be in the UK's interests. Concerns centre on matters including the extent to which the EU can be considered democratic, pressures arising from the exercise of free movement rights, as well as matters of sovereignty.

## Sovereignty

Sovereignty can be understood as the authority of a state to govern itself, and determine its own laws and policies. In the case of the UK, there is also the idea of parliamentary sovereignty, which holds that the Westminster Parliament is the highest source of authority and can make laws without restriction. On one level, the UK's sovereign law-making powers, centred on its Parliament, are challenged by its membership of the European Union, as the UK is constrained in its actions by the agreements it has entered into and laws made under the EU Treaties. These laws have primacy over the laws of the Member States, and should be respected. Respect for EU law is written into the UK's devolution agreements. The Government of Wales Act for example provides that no laws can be made by the Welsh ministers or the Assembly which breach EU law (s 80 and s 108).

However, the pooling of sovereignty, and restriction on the UK Parliament's powers has been voluntarily entered into by the UK. Indeed, parliamentary sovereignty is seen still to apply as it is an Act of Parliament - the European Communities Act 1972 - that is the doorway into UK law for EU law, and which establishes that EU law is to be given priority in case of conflicting laws. The UK Parliament could revoke that law – though that would leave the UK in breach of the terms of EU membership. Finally, the fact that the UK is able to leave the EU is a clear indication that it remains ultimately a sovereign state.

## Withdrawal Process

Article 50 of the Treaty on European Union sets out the process for withdrawal. This article provides Member States with the option of submitting a request to withdraw from the EU and for a negotiated procedure to take place. Should the referendum decision be to leave, the Prime Minister has indicated that he will start the Article 50 procedure, with the notification of the European Council, and this could be as early as summer 2016. Negotiations between the withdrawing state and the EU Council (the heads of state of the other Member States) should result in an agreement, which will need the consent of the European Parliament. The date of withdrawal will be set out in the agreement, or will take place automatically two years after the original notification, though a joint decision can be made to extend this period. This withdrawal agreement will need supplementing by a further agreement on the new trade terms between the EU and UK.

## Role of Parliaments and Devolved Governments

Suggestions have been made that the Westminster Parliament could refuse to give its approval to any attempt to revoke the UK legislation which gives EU law its force in the UK, the European Communities Act 1972. The referendum itself has no automatic legal force, being advisory only, and a clear majority of MPs support continued EU membership.

It is also possible that the devolved parliaments and assemblies could refuse to give their legislative consent to amendments to the provisions in the devolution legislation which requires them to comply with EU law. Such refusals may be symbolic acts of protest if one or more of the UK's nations is taken out of the EU against the wishes of its public.

There is however no 'devolution lock', no requirement that each separate part of the UK vote for leave before leave can take place. A refusal of legislative consent can be overridden by Westminster legislation (the convention being that the UK Parliament would not normally legislate without devolved consent). However, within the scope of its devolved powers, Wales (or Scotland) could in theory decide to maintain EU laws in preference to new UK laws. This might be the case in areas where there is a difference in policy objectives between the devolved government and the UK government. A stronger commitment to environmental considerations and social justice in Wales for example might lead to increasing differences in law across the UK.

In such circumstances, the UK Parliament may seek to reassert itself over the devolved powers.

The ongoing process of devolution of powers away from London to Cardiff, Edinburgh and Belfast has taken place in the context of the UK's membership of the EU. The EU has provided an opportunity structure for the regions to promote their interests. At the same time, EU law has set important parameters for how different devolved decisions can be - this constraint would be removed if the UK leaves the EU. However, depending on the terms of the UK's future relations with the EU, wide areas of EU law may still need to apply to the UK, in order to permit its products access to the EU market, though without it having the same degree of input into EU rule making. International legal commitments may also provide constraints.

The reform and referendum process so far has seen a disappointingly limited role for the involvement of the Devolved Administrations. Their concerns about the timing of the referendum close to devolved elections were not responded to favourably by the UK Government. More generally, they were given very little opportunity to feed into the determination of reform objectives and agenda. In the event of a vote to leave, Wales will need to work hard to ensure its key areas of concern are given sufficient attention as part of the exit negotiations and future agreements.

## **Wales and the EU: Selected Policy Areas**

The EU has competence – the legal power to act – in a wide range of areas. The powers can result in the adoption of legal rules which need to take effect in the Member States. In a limited set of cases, competence is exclusive – only the EU has the power to act. More typically, law making powers are shared with the Member States, with EU law setting a minimum level of rights and obligations which must be respected, but can be exceeded. In some areas, policy cooperation is possible, but no law making powers have been given to the EU. When the EU acts, it must respect the twin principles of subsidiarity and proportionality – laws should only be adopted at EU level if their objectives cannot be sufficiently achieved at a local or national level, and laws must go no further than is necessary to achieve their aim. The Court of Justice of the European Union can, and has, struck down EU legislation which does not comply with these requirements.

In the overviews presented here, we explain what the powers of the EU are, and how they are shared with the UK and with Wales. We also explain what might happen to Wales' powers and responsibilities on a vote to leave.

## **The Budget**

- The EU Budget is proposed by the European Commission and agreed by Member State governments unanimously in the Council after consultation with the directly elected Members of the European Parliament. Individual Member States are able to veto the decision.

- The European Commission is responsible for the implementation of the EU budget. The EU accounts have been signed off for 19 consecutive years by the European Court of Auditors but without an unqualified approval. Errors in implementation by national authorities are the most significant issue.
- For the current 7-year budgeting period, the EU budget is around 900 billion euro. The EU budget is less than 1% of GDP and has been shrinking in recent years.
- Member States contribute to the EU budget roughly in relation to the size of their economy. The UK is in the top four contributors in amount paid in, however the UK has negotiated a rebate on its contribution and pays the least of all 28 Member States as a share of Gross National Income (GNI).
- Wales is a net beneficiary of the EU: in 2014, the net benefit to Wales of being in the EU was £245 million, or £79 per person. This figure excludes EU centrally funded programmes which were worth more than £12 million to Wales in 2014.
- If the UK leaves the EU, Wales will lose these revenue streams, unless they are replaced by central government.
- If the UK remains in the EU, Wales will remain a net beneficiary until at least the start of the next programming period in 2021.

## Cohesion Policy

- Cohesion Policy aims to reduce economic disparities across the EU territory. Regions are categorized according to their level of development and receive allocations of resources from up to three different funds with distinct priorities for action.
- Under the 2014-2020 programming period Wales has been allocated 2.4 billion euros, more than 20% of all funding available to the UK. Wales enjoys significantly higher levels of funding than other UK regions and is, as a result, a net beneficiary of EU membership
- Responsibility for implementation of cohesion policy is delegated to the Member States in line with their different institutional frameworks. In the UK, the administration of the funds in Wales falls under the responsibility of Welsh Ministers.
- In the event of Brexit, if Wales is to continue to receive similar levels of funding for economic development, this would have to come from domestic sources. Whether or not such funding is made available will have implications for economic strategy in Wales.



- Alternative models for UK-EU relationships could involve the UK contributing to a form of cohesion policy, though it may be unable to gain receipts for its own 'less developed regions' such as West Wales and the Valleys.
- As the significance of this policy is far greater for Wales than the UK as a whole, this is an area where Wales will need to ensure its interests are fully reflected in any Brexit negotiations.
- If the vote is to remain, Wales will need to participate as fully as possible in negotiations around future policy design for 2021 onwards.

## Environmental Law and Policy

- Environmental legislation was first enacted by the EU in response to concerns that different levels of environmental protection in different Member States would interfere with the functioning of the Single Market.
- EU environmental legislation is now considered the most influential and widely applied body of environmental law in the world. It aims at the establishment of minimum standards of environmental protection across the EU rather than harmonization, and increasingly can take account of regional differences.
- EU environmental law has driven up standards on such things as water quality, air quality, waste disposal, car emissions and beach cleanliness, and has given people the opportunity to know and be consulted about environmentally risky projects in their area. However, complying with environmental standards can impose significant costs, and in some cases, compliance costs may be out of proportion with the environmental benefits achieved.
- Environmental protection is a shared competence between the EU and Member States meaning both have the power to make laws – but national law should comply with EU law. In Wales the environment is a devolved matter, and the Welsh Ministers may pass laws to implement EU law in this area themselves, or allow the UK Government to extend legislation to cover Wales.
- The EU also has external competence in the field of the environment meaning it can represent the Member States externally and negotiate and conclude agreements with third countries and international organisations in specific situations e.g. to achieve EU treaty objectives.
- Since devolution, differences across the UK in policy implementation, enforcement, legal substance, structures and policy have become increasingly pronounced. The National Assembly has made use of its power to legislate for Wales on environmental measures, and on some matters goes further than the law in England. Nevertheless, the framework provided by EU law has prevented

further policy and legislative fragmentation across the constituent parts of the UK.

- EU environmental law interconnects with UK and Welsh law as well as international legal obligations to which the UK is party, meaning that if the UK leaves the EU, there would still be international obligations for it to comply with. In addition, future alternative trading relationships with the EU along the lines of EEA/EFTA would likely require compliance with EU environmental standards.
- If the UK remains in the EU, it may see the burden of environmental regulation reduced, in line with the Commission's current approach and the 'enhancing competitiveness' strand of the agreement reached by David Cameron with the other Member States in February 2016.

## Agriculture and Food

- Whilst the foundations of the Common Agricultural Policy (CAP) have remained unchanged since the 1957 Treaty of Rome, the focus of the policy has increasingly moved from production support to the sustainability of the wider rural economy.
- The share of the EU budget devoted to CAP has fallen in the last 30 years from 73 % in 1985 to 37.8 % for the period 2014-2020. The CAP has two pillars – Pillar 1 funds direct payments to farmers and is 100% EU-financed. Pillar 2 finances rural development more broadly and requires national resources to match EU funding.
- Under the 2014-2020 programming period Wales has been allocated more than 2.2 billion euros, with on average more than 80% of farming income in Wales originating from EU funding. In the event of Brexit, if Wales is to continue to receive similar levels of funding for agriculture, this would have to come from domestic sources. Whether or not such funding is made available will have implications for agricultural policy in Wales.
- Responsibility for implementation of the CAP is delegated to the Member States in line with their different institutional frameworks. In the UK, agricultural policy is a devolved matter. Regulation of agricultural activity and the administration of CAP funds in Wales fall under the responsibility of Welsh Ministers. In policy terms, there is an increasing divergence between Wales (and Scotland) and the non-devolved UK position on a wide range of agricultural issues.
- There is a very substantial body of regulatory requirements on farmers, affecting all aspects of farming life, including environmental considerations, such as rules on the permitted use of pesticides; animal welfare; plant protection; food safety, and traceability of products in the food chain.

- Compliance with regulatory standards gives access to the single market for agricultural products. Implementation at national (and regional) level sometimes goes further than is necessary ('goldplating').
- Receipt of funding under the CAP is now tied to farmers' compliance with a range of regulatory requirements, relating to, for example, environmental concerns, and animal welfare ('cross compliance').
- Welsh food and drink exports to the EU were worth £274.2 million in 2014, 90.7% of total exports, with only 9.3% going to non-EU countries. Exports from the sector increased 132% between 1999 and 2013 with 1 in 10 businesses in the sector now exporting.
- Welsh products benefit from the EU system of quality marks such as Protected Designated Origin (Anglesey Sea Salt) and Protected Geographical Indication (Pembrokeshire Earlies, Welsh Lamb and Welsh Beef), though such protection could continue if the UK leaves the EU.
- Alternative models for UK-EU relationships would involve domestic funding of agricultural policy and require the negotiation of free trade agreements or trading under WTO rules. Neither EEA nor EFTA arrangements cover CAP or trade in agricultural products, however under the EEA option, areas of EU legislation impacting on agriculture would still apply.

## The Single Market – Trade in Goods

- At the centre of the European Union is the Single Market. This market covers the 28 EU Member States and the members of EFTA, together forming the European Economic Area. In essence, the single market creates one single territory without borders in relation to trade, in both economic and legal terms. The single market should stimulate trade and competition, leading to greater efficiency and economic growth.
- At the core of the single market is a customs union, in which goods are traded between participating states without any customs duties being levied. This removes artificial cost barriers to trade.
- Crucially, the single market also prohibits measures which may restrict trade in goods on the basis of where they are from. This includes some forms of government support to home industries and purchasing policies, as well as national rules which discriminate against products from other Member States.
- A very wide range of national rules may be caught by the prohibition on trade restrictions. The Court of Justice of the European Union in Luxembourg as well as courts across the Member States are empowered to rule on the legality of national measures, such as the challenge to Scotland's minimum alcohol

pricing policy, brought by drinks companies. States must demonstrate that their policies can be justified for reasons such as public health grounds and there be no less trade restrictive approaches that could be taken to achieve the aims. This would apply to any re- introduction of Wales' proposed ban on vaping.

- The single market project also involves the adoption of single market legislation or harmonisation of rules across the EU, such as common rules on product safety, or energy usage. These rules often serve multiple aims - both consumer protection/environmental protection, as well as trade facilitation. Once the standards are met, the product can be traded anywhere across the EU. Mutual recognition is an alternative to legislation: Member States agree to recognise each other's regulatory requirements as equivalent to their own.
- The EU has power to legislate both on the Single Market and on the Customs Union: the EU's power to legislate on the Customs Union is exclusive while its power to legislate on the Single Market is shared with Member States. Where the EU has legislated on a specific matter, Member States no longer have the right to act or to behave in a way that is contrary to that legislation. Any legislation adopted by the Welsh Assembly and Government must comply with EU law obligations, and it may be set aside if it conflicts with the free movement obligations.
- Welsh companies exported more than £13.2bn worth of goods worldwide in 2014, of which more than £5.6bn or 42.8% went to the EU.
- If the UK leaves the EU and an alternative trading relationship is agreed with the EU, the majority of single market legislation will remain in place although this will depend on the depth and breadth of the agreement e.g. sectors covered. Under an EFTA/EEA type agreement the UK would have a much reduced role in influencing EU regulations and standards. In order for UK goods to be accepted in EU Member States' markets, UK businesses will need to comply with EU standards and regulations whether or not the UK is part of the Single Market.

## International Trade

- The EU is an important actor in international trade, it is one of the largest trading powers and the largest economy in the world, accounting for around 15 % of the world's trade in goods. It is both the world's leading host and source of Foreign Direct Investment (FDI).
- UK trade with countries outside the EU has recently be increasing in importance due to the strong economic growth of developing countries. Of the 28 Member States, the UK was the second largest exporter and importer in 2015. Welsh exports to non-EU countries exceed those to EU Member States with the USA, Germany and France key trading partners.

- The UK is the most attractive country in the EU for Foreign Direct Investment (FDI). In 2015 the UK captured 35% of all European headquarter (HQ) moves and achieved a leading market share of 29% of US projects in Europe. It was the main destination for investment in Europe from Japan, Australia, Canada and India. FDI projects in Wales increased by 75% in 2014 with employment created reaching over 2,970 jobs.
- The EU has the power to negotiate and conclude international agreements on behalf of its members under its Common Commercial Policy. Competence may also be shared with the Member States however. Where they are signatories to or members in their own right of international agreements, they participate directly in areas they have competence.
- Currently trade agreements are in place with more than 50 different countries guaranteeing free trade for 60% of the UK's trade. This will rise to nearly 90% if pending Free Trade Agreements such as Transatlantic Trade and Investment Partnership (TTIP) are signed.
- The UK government would regain competence for trade and investment on a UK withdrawal from the EU, within the confines of any international obligations or agreements (e.g. WTO, GATT) that the UK is signed up to. Wales can participate through national channels such as the Joint Ministerial Committee.
- If the UK remains in the EU, the UK will automatically become part of the TTIP and other international trade agreements currently being negotiated.
- If the UK were to leave the EU, new trade agreements would need to be negotiated with the EU and third countries. Otherwise trade could be subject to WTO rules, which is generally less beneficial. The UK could create a multitude of bi- or multi-lateral agreements, including with the EU, and / or applying to join a pre-existing FTA such as the European Free Trade Agreement (EFTA). Under EFTA, the UK would not automatically become party to EFTA's free trade agreements with more than 60 countries as they are agreed on a bilateral basis.

## Social and Employment Policy

- UK law on social and employment rights is impacted on by EU law in two main ways. The first is through the adoption of EU laws on employment rights, which set a minimum floor of rights across the EU and need to be incorporated into UK law. The second is by opening up social rights - rights to access to health and education services, for example, to EU citizens from other Member States. Access to these rights is not unconditional and is in principle limited to workers and their families.
- The EU first began passing laws on employment measures as a means to ensure there was a level playing field for companies across the EU - that no

country could gain a competitive advantage by cutting costs for businesses by reducing or removing worker protections.

- Since the 1970s, a body of employment law measures has been adopted which cover such issues as equality rights; health and safety at work; family friendly policies and the protection of workers on non-typical contracts. These rules set a minimum which countries are free to go above under their own laws. The EU is excluded from passing laws on some subjects, for example, minimum wage.
- Employment laws create costs for businesses and two in particular are highlighted as being costly - the Working Time Directive and the Temporary Agency Workers Directive. The UK has some flexibility in how it implements these Directives.
- If the UK withdraws from the EU, depending on the new relationship agreed, it may remain bound to respect EU employment law. Countries who are not EU members but who have access to the single market through EFTA are required to give effect to EU employment law as a condition of membership, but do not have the same level of involvement in the law making process.
- The UK government would regain competence for social and employment policy on a UK withdrawal from the EU, within the confines of any international obligations or agreements that the UK is signed up to (e.g. the UN International Labour Organisation) and which workers can rely on before local courts. These obligations do not have the same enforceability as EU law however.
- Employment law is not devolved to Wales and, as a general rule, the UK Parliament legislates for Wales. However, if the UK withdraws from the EU, it may be possible, though unlikely, that Wales could chose to maintain different levels of employment rights. Wales was recognised as being able to introduce rules on wages and employment conditions for agricultural workers, through the powers it holds in the field of agriculture. It could seek to use its powers in the field of public services to pass employment legislation affecting public sector workers for example.
- If the UK stays in the EU, it is unlikely to be required to implement much new employment law. The EU increasingly emphasizes light touch regulation, and this could be expected to be taken further following Cameron's February 2016 agreement which commits the EU to greater competitiveness. New limitations on the ability of EU citizens to claim benefits in the UK will apply, as part of David Cameron's renegotiated agreement of February 2016. Wales has little competence to pass laws in these areas, although it does have powers over the allocation of social housing.