

What does the EU mean to the UK Archaeology sector?

A briefing by The Archaeology Forum

May 2016

The Archaeology Forum (TAF) is a grouping of independent bodies concerned with the archaeological investigation, management and interpretation of the UK's historic environment – whether buried, built or submerged, in situ or in museum collections and archives.

1. Introduction & summary

The referendum on the UK's membership of the European Union is to be held on 23 June. This briefing sets out some of the main impacts that the decision may have on the future of the archaeological sector and the wider historic environment in the UK.

The purpose of this note is not to suggest how anyone should vote in the referendum, rather it is to highlight some of the effects that could be expected with either an 'in' or 'out' vote.

Any effects of a vote to leave the EU on June 23 will not be immediate. It will take at least two years for a UK withdrawal from the EU to come into effect. After this point there will be some immediate effects, and some longer term potentials for change, as well as some aspects which will be unaffected:

Immediate effects	Longer term potentials	No change
<ul style="list-style-type: none">• Loss of access to EU funding for research, tourism & development• Changes to existing policy programmes which rely on EU funding (e.g. agri-environment schemes)• Loss of access to EU cultural programmes (e.g. European Capital of Culture, European Heritage Label designations, EU Prize for Cultural Heritage)• Less say over development of EU cultural heritage policy• Uncertainty over policies to tackle illegal antiquities trade.	<ul style="list-style-type: none">• Possibility to redefine Environment Impact Assessment (EIA) regulations, in line with recent or future domestic planning reform• Possibility to redefine EU controlled VAT system (e.g. to reduce VAT on building repair)• Divergence from EU in terms of wider policy on cultural heritage• Likely loss of some influence in pan-European institutions (e.g. Europa Nostra)	<ul style="list-style-type: none">• Theoretical commitment to and influence on Council of Europe Conventions• European Heritage Days (i.e. Heritage Open Days, Doors Open Days)• Theoretical ability to engage in European Cultural Heritage Year 2018.

2. Practicalities

After a referendum vote to leave, official negotiations between the European Council and the withdrawing state would take place in order to agree a withdrawal agreement¹. There is a statutory limit of two years for these negotiations during which time the withdrawing country would remain

¹ Article 50, Treaty of the European Union - <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>

involved in all normal EU business. After this period, the withdrawal would come into force, regardless of the status of the agreement, unless a unanimous vote was by the European Council grant an extension.

It is likely that the entirety of this two-year period would be required to complete negotiations due to the complexity of necessary transitional agreements of disentangling the UK from various European structures, as well as negotiating new access to European markets. Some commentators² argue that, in reality, it would take a lot longer to reach an agreement, with the process of a major nation leaving the Union being unprecedented³.

3. Legislation

In terms of European Directives, there would be very little immediate disruption to UK practice. This is because whilst leaving the EU would nullify the legal duty on the UK to implement EU Directives, all such laws are already 'domesticised' into UK law and all domestic laws would remain in force until actively changed by the UK government. Given the range of laws originating from the EU and how deeply they are embedded into domestic law, this is likely to take many years, with many laws remaining in place for years or decades.

There are no Directives directly on the subject of the historic environment, but there are several which have important effects on the sector's work. For example:

- Environmental Impact Assessments Directive (83/337/EEC)
- Directive on the Assessment of the Effects of Certain Plans and Programmes on the Environment (Strategic Environment Assessments) (2001/42/EC)
- VAT Directive (2006/112/EC)
- Directive on the return of cultural objects unlawfully removed from the territory of a Member State (2014/60/EU)

3.1. EIAs and SEAs:

The Environmental Impact Assessments (EIA) Directive codifies protections for the historic environment which require certain actions from developers of large scale projects. SEAs (Strategic Environment Assessments) are used in local and neighbourhood planning processes for similar purposes.

These provisions could be eroded by future regulatory and planning policy changes – for instance, the government may wish to change the functions of the regulations in the light of economic pressures. On the other hand, it is possible that protections could be strengthened, however, given the evidence we have from current trends in planning policy this would seem unlikely.

EIA regulations codify strong pre-determination requirements for developers to produce statements of impact on archaeology as well as wider environmental factors for large scale development sites. Current planning policy reforms in England, however, have favoured a deregulatory approach to this type of planning provision – which are identified as barriers to growth which slow down development. Both the *Housing & Planning Act* and newly proposed *Neighbourhood Planning and Infrastructure Bill* both contain measures which have the potential to erode planning safeguards of this type. EIA

² For example; <http://www.theguardian.com/politics/2016/mar/30/uk-negotiate-eu-referendum-exit-two-years-lord-odonnell>

³ Greenland succeeded from Denmark in 1985 and therefore officially left the EU, but the process was considerably simpler than it would be for the UK in 2016.

requirements are one of the strongest defences for pre-commencement conditions on development which are used to assess archaeological and ecological suitability and which currently cannot be undermined.

Although planning reforms in Scotland and Wales have not displayed these trends to the same worrying extent, retaining the statutory protection for archaeological investigation in the planning system provided by the EIA Directive is beneficial to all UK nations, where it stands as the only responsibility in primary legislation to undertake such work – although Wales has recently introduced a statutory duty on Welsh Government to maintain Historic Environment Records.

Based on this evidence, the archaeological sector would have strong concerns that the Government in Westminster may seek to erode EIA provisions in future planning reform, in the event of an ‘out’ vote. This could potentially take the form of raised thresholds for EIA, reduced time periods allowed for Environmental Statements to be produced, or increasingly relaxation of permitted development to remove opportunities to conduct EIA⁴.

3.2. VAT:

A strong focus of wider Historic Environment advocacy for several years has been Value Added Tax and the consequences of a 0% VAT rate on new building and materials compared with a 20% VAT rate on repair of existing buildings. The root of this issue is the EU VAT Directives, which set out the types of product which are subject to VAT and at what rate (lower rate = 5%, higher rate = at least 15%).

In recent years there has been a strong lobby arguing for the re-balancing of VAT rates on repair. In response to campaigners, the UK Government has previously stated that they are unable to change the rates of VAT in response to these recognised issues (without entering into negotiations with the European Parliament).

In the event of a vote to leave the EU, it is possible that the UK Government could revisit VAT rates and change the level of tax applied to historic building repairs.

3.3. *Protection of cultural property and trade in illicit antiquities:*

The UK is currently bound by various international statutes governing the trade in illicit antiquities including the UNESCO 2001 Convention and the EU Directive on the return of cultural objects unlawfully removed from the territory of a Member State (2014/60/EU). It is likely that UK would remain committed to the general principles of cultural property protection and the eradication of the illicit trade in antiquities, and as such the current EU-derived legislation would be unlikely to be eroded in any new UK legislation.

There remains a question over what access the UK would have to European policing networks and jointly held EU data on international crime which may have implications for policing. Whilst these instruments do provide the UK with a potentially stronger framework for managing illicit trade in antiquities, in reality the extent to which the EU instruments are currently used to encourage good practice on this issue is limited. Withdrawing from the above directive may also impact on developed practices of cooperation and communication which enable the return of objects originating within the EU. However, the UK’s status as a destination state for illegal antiquaries is likely to mean that

⁴ Tim Pugh, Berwin Leighton Paisner - cited in <http://www.planningresource.co.uk/article/1386677/brexit-mean-planning>

efforts to police trade will continue to be supported, even if there is some disruption to the efficiency of cross-border working.

3.4. Council of Europe Conventions:

The UK government has ratified a number of Council of Europe Conventions including the 2000 European Landscape Convention, the 1992 Valetta Convention Concerning the Protection of the Archaeological Heritage, the 1985 Granada Convention or European Charter of the Architectural Heritage, and the 1954 Paris Convention or European Cultural Charter.

These conventions are not legal instruments and will remain current even if the UK leaves the EU, so in theory will not be subject to any change. However, in practice, a vote to leave the EU may lead to further marginalisation of these treaties, and slow implementation efforts, as the relevance of the European context declines. For instance, there is an argument that the UK is lagging behind on its obligations under the European Landscape Convention, and this would be unlikely to improve in the event of a vote to leave the EU.

4. Policy

4.1. Agri-environment schemes:

The Common Agricultural Policy (CAP) is a vast, complex, and controversial EU programme. The wider impact of Brexit on CAP are of huge significance to the agri-food sectors, but for the historic environment, the main potential impact will be on agri-environment schemes which are part of Pillar 2 of the CAP. These schemes enable farmers and landowners to receive subsidy for undertaking land management activities which promote sustainable land-use and which contribute to the conservation and protection of archaeological assets, as well as ecology and wider heritage assets.

In the event of an 'out' vote, the UK would be free to develop its own system of subsidy for UK farmers. Given that, overall, the UK currently contributes a net €1.27 billion to the CAP each year (after accounting for the UK's rebate), there would, in theory, be the same budget to continue to provide the same provision for all subsidy under the CAP. The UK Treasury has long been opposed to some aspects of the basic subsidy (Pillar 1), and Pillar 2 provision for encouraging sustainable farming has strong support across the environmental sector – albeit that the historic environment is a very small part of this wider lobbying coalition – so it is possible that agri-environment schemes would be maintained, although there could be some disruption while new policies are developed.

Landowners who are currently in receipt of subsidy for agri-environment schemes would not be guaranteed to continue to receive agreed subsidy beyond the end of the two-year withdrawal period, but this could be protected by governments in UK nations which sought to maintain the schemes under domestic policy.

5. EU cultural heritage programmes

There are various EU cultural heritage programmes to which the UK would lose access, resulting in a minor impediment to receive international prestige and attract investment.

- *European capital of culture*: These awards, made to Glasgow in 1990 and Liverpool in 2008 were successful at attracting investment and tourism. However, these awards are relatively infrequent and would not be impossible to recreate on a domestic scale, by increasing emphasis on and investment in the UK Capital of Culture scheme.

- *European Heritage Label* (EHL): there are currently no designated EHL sites in the UK, so any impact would be extremely isolated and limited.
- *EU Prize for Cultural Heritage*: These awards are made annually to up to 30 winners who receive up to €10,000 prize money and are a source of international prestige and opportunity to raise awareness. There were 4 UK winners in 2016, and 5 in 2015.

Other cultural heritage programmes, such as *European Heritage Days*, known as *Heritage Open Days* in England, *Doors Open Days* in Scotland, and *Open Doors* in Wales, are operated by the Council of Europe, and as such would be unaffected by a vote to leave the EU, and in any case, are virtually wholly reliant upon domestic funding.

Similarly, in theory, the currently proposed designation of a ‘*European Cultural Heritage Year*’ (ECHY) for 2018 would not be affected. However, in the event of a vote to leave the EU, the political will to contribute meaningfully to the ECHY would likely decline.

UK institutions would be able to remain members of independent organisations such as Europa Nostra, although the benefits of doing so would be reduced if there was less impact of EU cultural heritage policy on the UK after a withdrawal, as much of the focus of such supra-national groups is on lobbying the EU.

6. European priorities for cultural heritage

There are a variety of policies of importance to the historic environment which are situated at an EU level, however the EU Commission has not, up to this point, been moved to design legislation specifically on cultural heritage issues.

Since 2014 there has been an increased interest in cultural heritage strategy from European Institutions, which is most clearly articulated through the following publications:

1. European Commission (2014) [*Towards and integrated approach to cultural heritage for Europe*](#).
2. Council of the European Union (2014) [*Conclusions on cultural heritage as a strategic resource for a sustainable Europe*](#).
3. European Commission (2015) [*Getting Cultural Heritage to work for Europe: Report of the Horizon 2020 expert group on cultural heritage*](#).
4. [*Cultural Heritage Counts for Europe*](#) (2015)

The European sphere is uniquely suited to dealing with issues which have a trans-national relevance, this is possibly why it has developed such a strong emphasis on environment, climate change, and natural heritage (wildlife/ecology) protection as it is clearly advantageous to approach these issues from a perspective of collective action.

In terms of cultural heritage, the primary trans-national drivers of policy are the education of people in, and celebration of, cultural difference which is an explicit goal of the European Union – the motto of which is ‘unity in diversity’. Cultural heritage is recognised as having intrinsic value for society, based upon cultural, aesthetic and ecological values; it is recognised as a powerful force for ‘inclusive growth’, and contributes to social, economic, and environmental sustainability.

A UK exit from the EU would mean that we would miss out on any future benefits arising from this growing area of concern for European Union institutions. Although Governments in Scotland and Wales have shown some similar enthusiasm for investing in heritage as a contributor to growth, it is likely that all UK nations would stand to lose out from this lack of opportunity.

7. Funding

The historic environment is also tied up with wider policies on development funding for culture, tourism, and heritage. For cultural heritage, important EU policies include the European Research and Innovation Policy, Horizon 2020⁵, which is a major distributor of funding. As an illustration, the previous research and Innovation policy – the 7th Framework Programme – invested more than €170 million in cultural heritage research projects between 2007 and 2013⁶.

Other grants come from the Creative Europe programme, EUROPEANA, the COSME programme, the European Regional Development Fund, European Agricultural Fund, European Structural Investment Funds, Erasmus+, and Europe for Citizens project.

Leaving the EU would mean UK institutions would no longer be able to access this funding. Various academic, scientific, and charitable institutions have produced research which identifies that they would be considerably worse off if the UK left the EU⁷, not simply for access to current funding, but for a variety of benefits of pan-European research programmes⁸. That being said, the funding situation is complex, and the Vote Leave campaign claim that the UK Government would have freedoms to adjust for loss of gross European funding given that it could recover net contributions to the EU, although many voices in the charitable sector appear to dispute this claim^{9,10}.

8. Immigration and employment

The commercial archaeology sector is currently expected to see a huge boom in the coming 6 years due to increased infrastructure development from projects such as HS2 and rising development rates. Access to the EU labour market is likely to be a huge benefit to archaeological contractors in the coming years as the archaeology sector produces strategies to meet the demand created by development.

Whilst it is unclear what a post-Brexit immigration policy would look like, the process would be necessarily slower and more resource intensive, and if currently high requirements for migrants were still in place (e.g. permanent contract job offers, skilled worker status, high income) it may become much more difficult for the sector to fulfil demand.

⁵ <https://ec.europa.eu/programmes/horizon2020/en/h2020-section/climate-action-environment-resource-efficiency-and-raw-materials>

⁶ <https://ec.europa.eu/research/environment/index.cfm?pg=cultural>

⁷ For example: <http://www.telegraph.co.uk/news/newstopics/eureferendum/12196871/Leaving-the-EU-would-risk-Britains-status-as-a-science-superpower.html>, <http://www.theguardian.com/politics/2015/nov/11/leaving-eu-would-be-a-disaster-british-universities-warn>

⁸ For example: <http://blogs.lse.ac.uk/brexitvote/2015/12/05/debunking-the-myths-about-british-science-after-an-eu-exit/>

⁹ Ibid.

¹⁰ For example: <http://www.cause4.co.uk/2016/03/brexit-implications-for-social-enterprises-and-charities/>