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Welsh Government

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Welsh European Funding Office

## **EU Exit Transition & Post Transition Period - EU Structural Funds 2014-20 Programmes.**

### **Frequently Asked Questions**

Version 3

September 2021

Cronfeydd yr UE:  
Buddsoddi yng  
Nghymru  
EU Funds:  
Investing in Wales



## VERSION HISTORY

<b>Version</b>	<b>Date</b>	<b>Comments</b>
1.0	8 December 2020	Issued directly to ERDF/ESF beneficiaries. Published on EU Funding pages of the Welsh Government website.
2.0	February 2021	Updates to Questions: 6, 7, 8, 9 and 10.
3.0	September 2021	Update to Question 8

## **Background**

This document aims to provide beneficiaries of Structural Fund operations with further detail on how the EU Exit transition & post transition period may directly impact on the running of existing operations. However, it is important to note that, for the majority of EU funded operations, there will be very little change after the end of the transition period on 31 December 2020.

Under the terms of the Withdrawal Agreement, which was agreed between the UK and EU in late 2019, the UK will continue to participate in EU programmes funded through the current 2014-2020 Multiannual Financial Framework. This includes all European Structural and Investment Funds (ESIFs):

- European Regional Development Fund (ERDF)
- European Social Fund (ESF)
- European Territorial Cooperation (ETC) programmes
- Ireland Wales programme
- European Agricultural Fund for Rural Development (EAFRD) □ European Maritime and Fisheries Fund (EMFF).

This means that there is no change in the existing arrangements for beneficiaries of current EU-funded projects. This applies to all aspects of managing projects including the submission and payment of claims, verification checks and, importantly, retention of relevant records.

**Further information can be found in the following link (Welsh Government website):**

### **[Brexit and EU funded projects](#)**

In the meantime, this FAQ document has been produced for beneficiaries to reference before contacting WEFO. This document sits alongside the '**Eligibility Rules and Conditions for Support from the European Structural Funds 20142020**' and form part of Wales' national rules for Structural Funds.

#### **1. What is the transition period and when will it end?**

As part of the Withdrawal Agreement agreed between the UK and EU in late 2019, the UK formally left the European Union on 31 January 2020 and entered in to what is called a 'Transition Period' (sometimes called implementation period) while the UK and the EU negotiate the future relationship. Under the terms of the transition, most EU law continued to apply to the UK, which meant that not much changed in terms of the UK's relationship with the EU. At the end of the transition

period on the 31 December 2020, there are likely to be some changes that may impact on some existing EU funded operations.

**2. Will anything change in terms of delivering the Structural Fund Programmes post transition period?**

No, there will be no change to the existing arrangements for the current EU funded operations. As referenced in Article 138 of the Withdrawal Agreement, all operations will continue to receive EU funding under the normal rules and you should continue to deliver your operation as you currently do. Under the terms of the Withdrawal Agreement, which was signed in January 2020, the UK will remain in the 2014-2020 ESIF programmes with EU funding until December 2023, when they will be closed.

No changes are required to your existing Funding Agreement and all obligations arising from those Funding Agreements will continue to remain in effect.

**3. Will operations continue to be funded post transition period?**

Yes, beneficiaries will continue to receive EU funding over the lifetime of operations and within the dates agreed in your delivery profile. Any changes to these dates will need to be discussed and agreed with your assigned WEFO Project Development Officer (PDO). In order to assist with/ enable the orderly closure of the 2014-20 programmes, the majority of operations supported by WEFO will complete by June 2023. There are some exceptions, however, these are minimal. You should continue to use WEFO Online to submit claims and update information.

**4. Will existing rules and conditions continue post transition period?**

Yes, all existing rules and conditions will continue to apply post transition and that is a requirement of the Withdrawal Agreement between the EU and UK. This includes the ESI regulations themselves, procurement, state aid and GDPR. You should continue to refer to the same WEFO eligibility rules and guidance documents and follow all applicable EU law.

**5. Operations currently being developed**

If you are working on potential operations, you should continue to develop your plans with us.

**6. Will the General Data Protection Regulation (GDPR) still apply post transition period?**

During the transition period the GDPR continued to apply to the UK and there was a requirement to continue to follow existing law and guidance. As from 1 January 2021, the GDPR has been brought into UK law (with minor amendments to make it function properly in a UK-only context) & is now termed 'UK GDPR'. The Data Protection Act 2018 will continue to apply. The UK Government has said that transfers of data from the UK to the European Economic Area (EEA) will not be restricted. This means that data protection law and standards will continue, much as before, and the flow of data both within the UK and from the UK to the EU will not be affected. **Therefore, most operations will be unaffected after the transition period.** See response below for data transferred from outside of the UK.

## 7. What about restrictions on the transfer of data from EU/EEA to the UK?

As from 1 January 2021, the UK is considered a third country i.e. outside of the EU/ EEA & therefore outside of EU GDP Legislation. As a result, the transfer of any data from the EU/ EEA to the UK is subject to UK GDPR restrictions on the transfer of personal data to third countries. In order to enable the continued free flow of personal data from EU/ EEA to the UK the European Commission & the UK are liaising in the development of an adequacy decision.

Whilst awaiting the determination/ issue of an adequacy decision the UK Government and the EU have agreed that personal data from the EU (and EEA) to the UK will be allowed to flow freely for a period not exceeding six months i.e. until the end of June 2021. This time period will enable the EU and UK to develop the required adequacy decisions. Beneficiaries must therefore continue to follow (a) the EU data protection law (as at 31 December 2020) and (b) the procedures/ processes currently in place for reporting/ providing such data to WEFO.

For information, please find below hyperlinks to the Information Commissioner's Office (ICO) website (a) announcing the six-month data flow extension and (b) providing details of the ICO Data sharing code of practice - a practical guide for organisations about how to share personal data in compliance with data protection law:

**ICO statement in response to the UK Government's announcement on the extended period for personal data flows, that will allow time to complete the adequacy process:** <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/12/icostatement-in-response-to-uk-governments-announcement-on-the-extendedperiod-for-personal-data-flows-that-will-allow-time-to-complete-the-adequacyprocess/>

**ICO Data sharing: a code of practice:**

<https://ico.org.uk/for-organisations/data-sharing-a-code-of-practice/>

This will mostly affect operations in the Ireland Wales programme. WEFO has notified beneficiaries of these operations and, if necessary, will ensure that appropriate safeguards are established and maintained in order to enable continued data flow.

## 8. What will happen to the public procurement rules post transition period?

**EU public procurement rules must continue to apply to all EU funded operations after 31 December 2020.** Therefore, in order to be able to meet the related requirements, beneficiaries must continue to advertise contracts that exceed the specified EU thresholds and publish notices on the Official Journal of the European Union (OJEU) and Tenders Electronic Daily (TED). The European Commission has confirmed that the UK will continue to have access to the OJEU and TED until the end of the Programmes. Beneficiaries must therefore continue to advertise these contracts/ publish award notices via Sell2Wales and, to ensure these procurements are advertised on OJEU and TED, beneficiaries will need to **tick the 'EU funded' box** when completing the contract notice creation form on the Sell2Wales system.

July 2021 update: Sell2Wales has issued a news item ([News - Sell2Wales \(gov.wales\)](#)) confirming that, from July 2021, any new procurements for EU funded projects **will be published on OJEU, TED and Sell2Wales only** (these procurements will not appear within the UK 'Find a Tender Service' (FTS)). Legal advice has confirmed that this action is required in order to avoid a breach of Article 52 of the EU Public Procurement Directive 2014/24EU, i.e. contract notices must be published on OJEU and TED before any publication at national level (FTS), unless 48-hours has elapsed from the notice being issued to OJEU and TED. Publishing on FTS in advance or at the same time as the OJEU and TED will constitute a breach of Article 138 of the Withdrawal Agreement.

Please note that the changes will take effect from July 2021.

**For EU funded operation procurements that are below the EU threshold and which will be advertised/ awarded by contracting and non-contracting authorities as from 1 January 2021.** Beneficiaries will still need to adhere to the EU Treaty principles of transparency, non-discrimination and equal treatment as well as adhering to their own established procurement policies and WEFO's minimum standards (as noted at Section 36 of 'WEFO Eligibility Rules and Conditions for Support from the European Structural Funds 2014-2020'). Any breach of these could result in WEFO applying a financial correction as outlined within the Commission Decision of 19.12.2013 entitled, 'Guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement'.

For information - details on public procurement policy can be located via the Sell2Wales website: <https://www.sell2wales.gov.wales/helpandresources/5>

## **9. Will State Aid rules continue to apply to my operation post transition period?**

As set out in the Withdrawal Agreement, our continued participation in the EU Structural Fund Programmes is dependent on the continued adherence to applicable EU Law, this includes State Aid rules. Therefore, the EU State Aid rules will continue to apply to our Programmes post transition period and you must continue to comply with the current State Aid Rules for the duration of your operations and up until closure.

The UK Subsidy Control Regime which became operational as from 1 January 2021 will have no impact on EU funded programmes/ rules. Therefore, EU state aid rules, including de-minimis, must continue to be applied to EU Programmes.

For operations that have already been approved and have state aid cover (including state aid schemes that were originally due to expire at the end of 2020. Please note these schemes, in the majority of cases have now been extended until 31 December 2023), the rules and the applicable state aid cover continue to apply to the entirety of the delivery of the operation.

All operations approved from 1 January 2021 and that require state aid cover, inclusive of de-minimis cover, will receive a funding agreement referencing the applicable state aid cover e.g. Welsh Government GBER scheme, Higher Education, Further Education and Local Authority led GBER schemes (where such schemes exist and/ or have been raised by UK Government), cover via the Coronavirus Response Investment Initiative (CRII)/ CRII+ State Aid Temporary Framework, etc;. Where beneficiaries introduce new activity into already approved structural fund supported operations and for which new state aid cover is required, WEFO will again issue a new funding agreement referencing the applicable state aid cover. In terms of the various elements of State Aid cover, please see additional information provided below:

### **Welsh Government/ WLGA/ HE & FE GBER Registered Schemes as from 1 January 2021:**

Welsh Government (WG) State Aid Unit is currently re-registering all WG GBER schemes & assisting in the extension of all WLGA/ HE & FE led GBER schemes, extending their duration until 31 December 2023. Beneficiaries will therefore be able to continue to use these GBER schemes for their operations approved by WEFO from 1 January 2021 and will need to ensure continued compliance with the requirements of each GBER scheme – as currently exercised. In addition, and where the activity of an approved operation regards the provision of financial



assistance to recipients (as defined at Part Two, Title XI, Chapter 3, Article 3.1.1.b) of the UK-EU Trade Cooperation Agreement (TCA)), beneficiaries will be required to complete a checklist noting consideration of the UK Subsidy Control Regime principles. The completion of the checklist will accommodate any potential judicial reviews sought by an individual or company where 'unfair advantage' and/ or 'acting beyond one's legal power or authority' are claimed. Please see hyperlink below for ease of access to the checklist:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948391/Public\\_authorities\\_\\_assessment\\_of\\_how\\_individual\\_subsidies\\_comply\\_with\\_UK-EU\\_Trade\\_and\\_Cooperation\\_Agreement\\_principles\\_.odt](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948391/Public_authorities__assessment_of_how_individual_subsidies_comply_with_UK-EU_Trade_and_Cooperation_Agreement_principles_.odt) **COVID-19**

### **State Aid Temporary Framework Scheme:**

The EC published a Temporary Framework for State Aid measures on 19 March 2020 (with subsequent updates 3 April, 8 May) to accommodate the flexibilities afforded by the EC via the Coronavirus Response Investment Initiative (CRII) and subsequently CRII+. This scheme has been extended until June 2021 and is available to EU funded operations where the activity permits.

Beneficiaries utilising the Temporary Framework for activity within their operations, which aim to stem/ assist in the economic impact of COVID-19 and involves providing financial support to recipients, will need to complete a checklist noting consideration of the UK Subsidy Control Regime principles. The completion of the checklist will accommodate any potential judicial reviews sought by an individual or company where 'unfair advantage' and/ or 'acting beyond one's legal power or authority' are claimed. Please see hyperlink below for ease of access to the checklist:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948391/Public\\_authorities\\_\\_assessment\\_of\\_how\\_individual\\_subsidies\\_comply\\_with\\_UK-EU\\_Trade\\_and\\_Cooperation\\_Agreement\\_principles\\_.odt](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948391/Public_authorities__assessment_of_how_individual_subsidies_comply_with_UK-EU_Trade_and_Cooperation_Agreement_principles_.odt)

### **De-minimis Scheme:**

Beneficiaries of EU Programmes will need to continue to abide by the previous requirements associated with de-minimis aid i.e. (a) ensuring aid recipient does not receive aid that will exceed the De Minimis threshold over a 3 year fiscal period and (b) providing aid recipient with details of the value of the de-minimis aid being awarded.

In addition, the introduction of the UK Subsidy Control Regime will encompass a scheme/ threshold similar to de minimis aid – its threshold being calculated in an



international currency known as Special Drawing Rights. In light of this, beneficiaries will need to complete a checklist noting consideration of the UK Subsidy Control Regime scheme/ threshold principles. The completion of the checklist will accommodate any potential judicial reviews sought by an individual or company where 'unfair advantage' and/ or 'acting beyond one's legal power or authority' are claimed. Please see hyperlink below for ease of access to the checklist:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948391/Public authorities assessment of how individual subsidies comply with UK-EU Trade and Cooperation Agreement principles .odt](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948391/Public_authorities_assessment_of_how_individual_subsidies_comply_with_UK-EU_Trade_and_Cooperation_Agreement_principles_.odt)

**A fundamental consideration for beneficiaries and aid recipients - where de minimis applies via an EU supported operation, should a beneficiary and/ or aid recipient also receive a subsidy via the UK-EU TCA which is below the Special Drawing Rights threshold, then the amount of this subsidy will count towards the EU de-minimis threshold of €200k over a 3 year fiscal period.**

#### **10. Will EU citizens still be eligible for operations delivered by the European Social Fund?**

Anyone who can evidence their legal right to live/ work in the UK would meet the basic eligibility rule for ESF funding whether they come from the EU or rest of world and that will continue to apply.

EU, EEA or Swiss citizens, resident in the UK by 31 December 2020, will need to apply to the EU Settlement Scheme to continue living in the UK. This requirement will also be applicable where you qualify as a family member of an eligible person of Northern Ireland – further details of the qualification criteria can be found within the EU Settlement hyperlink provided below. The deadline for this is **30 June 2021**.

[EU Settlement Scheme GOV.UK Website](#)

Please note this requirement does not, in the majority of cases, apply to Irish citizens as they are not required to request permission to enter/ remain in the UK. There are some exclusions and details of these can be found within the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, Part 1, Section 2 <https://www.legislation.gov.uk/ukpga/2020/20/enacted>

After 1 January 2021, EU participants can also provide confirmation of their EU settlement scheme/ status to confirm their eligibility for ESF support. This will only apply to EU participants recruited onto ESF operations from 1 January 2021

and a retrospective exercise on current/ approved ESF operations/ participants will not be required.

The following presentation explains some of the practicalities about how the EU Settlement Scheme will work and the evidence beneficiaries may be required to collect to determine participant eligibility:

[EU Settlement Scheme Presentation](#) The

main points are:

- Successful applicants will receive digital proof of their status through an online service: [gov.uk/view-prove-immigration-status](https://gov.uk/view-prove-immigration-status). A physical document will not be provided, not unless you are from outside the EEA and do not already have a biometric residence card. Progress of applications can be tracked online
- Both pre-settled status and settled status will enable a successful applicant to continue to live, work and study in the UK beyond 30 June 2021

#### **11. Will EU document retention periods still apply post transition period.**

Yes, the same document retention requirements will continue to apply and you should not destroy any documentation until advised to do so by WEFO in writing, as referenced in both the Funding Agreement and WEFO eligibility rules – **Section 5.1.4.1 Document Retention and Record Retention Periods.**

#### **12. Will verification and audits continue as usual after the transition period?**

Yes, all current verification and audits will continue as usual post transition period. This includes WEFO's Management Verification Team, European Funds Audit Team, European Commission auditors and European Court of Auditors. You will still be required to maintain all relevant documentation and comply with all audit requirements.

#### **13. (Ireland Wales specific question) Can a UK Lead Beneficiary continue to undertake all the existing functions and responsibilities or should we now look to find a lead partner from a Member State?**

The Withdrawal Agreement between the UK and EU means that the UK will continue to participate in current programmes until the end. UK organisations acting as lead beneficiaries in operations should therefore continue to undertake all functions and responsibilities as at present.

**To Note:** Beneficiaries, particularly those in the public sector, may have recently received a letter from H M Treasury (Dear Accounting Officer) concerning, 'Managing Public Money', DAO 02/ 21, dated 15 January 2021. The letter

advises that as the UK has completed its transition from the European Union (EU), then as from 1 January 2021 public bodies no longer need to adhere to EU policies, frameworks, processes in managing public funds. This does not apply to the EU Structural Fund Programmes as per the terms of the Withdrawal Agreement (Article 138). Therefore, all beneficiaries in receipt of support from the EU Structural Funds must continue to comply with EU laws and requirements as stated within their funding agreements for the duration/ entirety of their operations and inclusive of the required document retention periods.

**Should you have any further queries, please discuss them with your PDO in the first instance. This document will be revised and updated as the situation develops.**



For further information:

[www.gov.wales](http://www.gov.wales)

[@wefowales/@wefocymru](#)

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