THE EU REFERENDUM

A DISCUSSION PAPER FOR CHARITIES

April 2016

NCVO

CHAMPIONING VOLUNTARY ACTION

Contents

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Introduction

This paper aims to provide a guide to the debate on Britain's continued membership of the European Union (EU) for voluntary organisations. Relatively little has been written about the impact of the EU on the voluntary sector, although a recurring theme in conversations with people in the sector has been the question of values: the EU is underpinned by a commitment to equality, fairness, solidarity and social justice, values that are highly congruent with those of the voluntary sector. This suggests that sector perspectives on EU membership may be rather different to mainstream debates that have focused on markets and migration.

Even so, there is a discernible gap between those who are actively engaged with the EU in some way, perhaps as members of a European network or because they have had EU funding, and the rest of the sector. For many it is a 'known unknown', but as the referendum debate gathers momentum in coming months trustees will want to consider what it might mean for their organisation and their beneficiaries. NCVO is keen to stimulate discussion and explore sector perspectives on this issue and this is part of that process.

This paper is in two parts.

- Part one analyses some of the controversies underlying the referendum debate so far and considers what a British exit ('Brexit') might mean and what alternatives to full membership currently exist.

- Part two examines the impact of the EU on the sector, including EU support for voluntary sector organisations, both their engagement with EU institutions and with each other, as well as issues relating to funding and public procurement.

Our original intention was to weigh up the pros and cons of EU membership to see if the benefits to voluntary organisations outweighed the costs or vice versa. This proved extremely difficult to do, not least because, looking at the issues underpinning the referendum debate, it all depends. It depends on whether you see labour market laws or environmental protection, for example, as a cost or a benefit. It depends on what role you believe nation states could or should have in an increasingly globalised world. Or how free you think markets should be. It is not for NCVO to come up with answers, nor do we think there should be a single sector voice on this issue, but we are keen to provide a framework and a forum for debate.

Campaigning in the referendum

The Charity Commission's general guidance on referendum campaigns is clear that charities should only take a position if there is a direct overlap with, and impact on, their aims.[1] More recent guidance from the Charity Commission specific to the 2016 EU referendum advises that campaigning for a specific

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[1] Charity Commission (2014) *Charities, Elections and Referendums*. London: Charity Commission.

outcome would only be permissible in 'exceptional circumstances'.[2] It specifically confirms that receipt of EU funding and any risk of losing this funding would not, in itself, be sufficient grounds to campaign for an 'in' vote. In light of these rules, few charities would be able to justify directly campaigning in favour of Britain remaining in, or leaving, the EU.

However, a charity can comment on issues that are relevant to its charitable purpose provided that it maintains its impartiality and independence:

> If you want to provide information on how remaining in or leaving the EU would affect your beneficiaries, you must be clear how this would support your charitable purposes. You must also ensure that information you provide is based on accurate evidence.[3]

Trustees should consider the reputational risks of getting involved in this debate and ensure that these are managed appropriately. Trustees should read and consider the Charity Commission guidance; they may also wish to consider taking legal advice. Any statements the charity makes should be well founded and supported by evidence. Trustees should also plan beyond the referendum to ensure that they will be able to continue to represent the interests of their charity and its beneficiaries effectively, whatever the outcome.

Questions for trustees

Before deciding whether to engage in debate, trustees might want to ask themselves the following questions.

- Does the EU have a direct impact (positive or negative) on the work of your charity and its beneficiaries?

- Would the outcome of the referendum have a direct impact on the work of your charity and its beneficiaries?

- What evidence do you have to demonstrate this?

- Would engaging in the referendum debate, even in a limited way, help to further your charitable purpose?

- Is it a reasonable and effective use of charitable resources (time and money)?

- What are the reputational risks of engaging publicly in this debate? How will you manage these?

- How will you ensure that your independence or impartiality is not compromised?

- Do you have plans in place for the post-referendum period? How will the charity position itself if the result is (i) a vote to remain in the EU or (ii) a vote to leave?

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[2] Charity Commission (2016) *The European Union Referendum: The Charity Commission's regulatory guidance for charities.* London: Charity Commission. www.gov.uk/government/news/charity-regulator-issues-guidance-on-eu-referendum (accessed April 2016)

[3] Ibid.

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Part 1: Reforming the EU

In 2013 the prime minister first set out his agenda for EU reform. His priorities then, as now, were to: ensure that the interests of countries outside the eurozone were protected; curb excessive regulation, particularly in relation to the labour market; give more power to member states ('we cannot harmonise everything'); and restrict EU migrants' access to in-work benefits.[4] These themes were the basis of the proposed 'new settlement' for the UK, negotiated by the prime minister in February 2016.

The debate so far

Commentators on both sides of the debate have commented on the prime minister's negotiated settlement, arguing respectively that it represents a strong deal for Britain or that it did not go far enough. Judged against the prime minister's initial proposals, it is clear that he secured many of the changes sought,[5] but the issue for many 'out' campaigners is whether enough change was sought in the first place.

Otherwise, the debate so far has often generated more heat than light, perhaps particularly in relation to some of the most contentious issues. For example, claims that EU migrants in the UK, particularly those from Eastern European countries, are taking 'British jobs' or (more importantly) 'taking advantage' of the benefits system have little foundation: between 2000 and 2011 EU migrants to the UK paid far more in taxes than they took in welfare benefits, making a net contribution to the public finances of £20bn – approximately £5bn of this came from Eastern European workers.[6] Evidence that the benefit system itself is a driver for EU migrants is ambiguous at best.[7]

EU employment laws, particularly the Working Time Directive (WTD),[8] have long been a focus of discontent for commentators in the UK, but their actual impact is unclear. For example, most businesses make use of Britain's opt out of the WTD, allowing individual workers to work longer hours if they choose, provided they are not forced to, nor penalised for not doing so. This is widely used and while 'some

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[4] Cameron D (2013) 'EU speech at Bloomberg' www.gov.uk/government/speeches/eu-speech-at-bloomberg (accessed April 2016)

[5] BBC 'EU reform deal: What Cameron wanted and what he got'. www.bbc.co.uk/news/uk-politics-eu-referendum-35622105 (accessed April 2016)

[6] Dustmann and C. Frattini T. (2014) 'The fiscal effects of immigration to the UK', *The Economic Journal*, vol. 124, no. 580, pp.F593–F643.

[7] The Migration Observatory (2014) *Costs and 'Benefits': Benefits tourism, what does it mean?* Oxford: The Migration Observatory. See also Portes J. (2015) *Migrants, Benefits and the UK's Renegotiation: Questions and answers (updated).* London: NIESR.

[8] The Working Time Directive (WTD) exists to promote the health and safety of workers in the EU. It limits the number of hours that can be worked in a day or week and gives all workers the right to at least 20 days' holiday. One of the main provisions limits working hours to a maximum of 48 in an average week.

complain about the bureaucracy in monitoring their employees working hours ... many, especially smaller ones, seem barely aware of the requirements'.[9]

Even attempts to quantify the cost of EU membership have come up with wildly differing estimates. The Institute of Economic Affairs, for example, has previously estimated that a British exit from the EU would *save* the country between 3.2 and 3.7% of GDP. The Confederation of British Industry (CBI), on the other hand, has argued that leaving the EU would *cost* Britain between 4 and 5% of GDP. Others have come up with different figures on both sides of the equation.[10]

In fact, 'demonstrating that the net effects are positive or negative is a formidably difficult exercise':

> This is because many of the costs and benefits are subjective or intangible. It is also because a host of assumptions must be made to reach an estimate. If the UK were to leave the EU, assumptions must be made about the terms on which this would be done and how the Government would fill the policy vacuum left in areas where the EU currently has competence. If the UK were to remain in a reformed EU, assumptions need to be made about what the reforms might be.[11]

A question of sovereignty?

The question most often asked in relation to our membership of the EU is that of sovereignty: which decisions should be taken at the European level and which should be left for member states to decide for themselves. Since the turn of the century the range of issues with which the EU concerns itself has increased, justified by a perceived need to:

- ensure the smooth functioning of the single market, setting minimum standards to create a level playing field for companies
- promote economic, social and territorial cohesion, creating a level playing field between member states
- co-ordinate action by member states to tackle common challenges such as globalisation, a rapidly changing industrial base, an ageing population, social exclusion and climate change.

There are limits to the EU's powers: strategic decisions must be agreed by heads of state through the European Council; the detail of policy is agreed by national government representatives, through the Council of Ministers; and elected members of parliament have a veto on both (see Appendix 1 for more details). However, because most policies have to be agreed by a majority of member states, individual governments sometimes have to abide by decisions they were not in favour of.

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[9] Barysch K. (2013) *The Working Time Directive: What's the fuss about?* London: Centre for European Reform, p.11.
[10] See for example: Miller V., Lang A., Smith B., Webb D., Harari D., Keep M. and Bowers P. (2015) *Exiting the EU: UK reform proposals, legal impact and alternatives to membership.* Briefing Paper Number 7214. London: House of Commons Library.
[11] Ibid.

The EU's competence is much stronger in some areas than others. For example, decisions related to the single market are subject to EU law and must be complied with. This includes competition policy, labour market standards and the free movement of capital, goods and services. In contrast the EU has very little say in how national governments address issues such as social cohesion beyond agreeing a framework for action and setting broad objectives.

The single market

At the heart of the EU, and central to Britain's relationship to it, is the single market. The EU is Britain's closest and most important trading partner, accounting for 45% of exports and 53% of imports in 2014. It is also the biggest single market in the world, 'opening up a 500-million strong consumer market to British businesses'.[12] The single market guarantees the free movement of goods, services, capital and workers throughout the European Union. To achieve this the EU sets common minimum standards across all member states, with the aim of removing the barriers to intra-EU trade. This includes harmonising working conditions and setting minimum product standards, as well as removing all financial tariffs ('duty free').

Better regulation?

For many, the EU has become synonymous with excessive regulation and red tape, placing an undue burden on British business, stifling the economy and entrepreneurship and imposing enormous costs on taxpayers.[13] The thinktank Open Europe, for example, has suggested that that 'the top 100 EU rules cost Britain £33.3bn',[14] while the Institute of Directors has warned that excessive regulation will make it harder for EU companies to compete in the global market place.

But for the single market to work, there needs to be an agreed framework of rules so that member states can compete on equal terms. Looked at in this way, common standards actually *reduce* regulation, enabling British firms to sell the same product in all 28 member states without having to meet 28 different standards. This why the CBI, a longstanding critic of the European Commission, has argued that 'the net costs are less extensive than often reported and the price of membership is well worth the benefits secured'.[15]

Underlying the debate about 'better' regulation are competing ideas of the 'good society': should rules that protect workers' rights, discourage discrimination or protect the environment be seen as burdens or benefits? This is as much a question for voluntary and community organisations as it is for other sectors, but it should be noted that some voluntary organisations have been strong proponents of the need for effective social and environmental protection for vulnerable people and places (see Part 2 below).

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[12] Confederation of British Industry (2013) Our Global Future. London: Confederation of British Industry, p.6.
[13] See for example: www.brugesgroup.com/democracy/47-issues/democracy/503-euro-creep
[14] Open Europe (2015) Top 100 EU rules cost Britain £33 billion. London: Open Europe.
[15] Confederation of British Industry (2013) Our Global Future. London: Confederation of British Industry, p.12.

EU laws and directives are undoubtedly complex and bureaucratic; all sectors find it difficult to navigate their way through. NCVO has long called for 'simplified EU regulation to ensure that EU rules benefit and don't hinder voluntary organisations'.[16] But there will always be a need to balance burdens and benefits, *better* regulation is not the same as *de*regulation.[17] In practice, deciding which policies require regulation and which do not is highly contentious. It is not just a question of sovereignty, it is about contested goals and values and how these should be realised in practice. Again this makes it difficult to determine whether the balance between the functions and limits of EU competence is the right one, as the Coalition Government's Balance of Competencies review found in 2014.[18]

Leaving the EU: What would happen next?

While there is much speculation about what a vote to leave the EU would mean, the truth is that nobody really knows. A vote to leave would just be the start of a process, whose outcome will depend on the British government's ability to renegotiate its relationship not only with the EU, but also with the rest of the world. Opinion is divided as to how strong a hand an independent Britain would have in these negotiations.

Optimists point to the fact that the UK has one of the strongest economies in Europe and are confident that, once freed from the constraints of the EU, it will be in a very strong position to negotiate terms not only with the EU, but also with countries outside it. In this scenario the UK will be able not only to gain access to the single market on its own terms, but also to enter into preferential, independent trade deals with the United States and emerging economies such as China, Brazil and India.

Others, such as the CBI, suggest that this optimism is misplaced: Britain would be in a relatively weak bargaining position in relation to other member states, who would understandably be reluctant to offer preferable terms. At the same time, international trade is being driven more by bilateral deals between regional trading blocs than by bodies such as the World Trade Organization. As a small, independent nation Britain would have considerably less leverage with countries outside the EU than it has as part of the biggest single market in the world.[19]

Which of these scenarios proves right won't become apparent until some considerable time after the referendum.

Existing alternatives, such as joining the European Economic Area (like Norway) or the European Free Trade Association (like Switzerland), would give the UK access to the single market. But we would still

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[16] Etherington S. (2014) 'Europe: where are we now?', in NCVO *Towards a More Open Europe.* London: NCVO.

[17] Solidar (2015) *REFIT: Cutting red tape as threat to social health and environmental standards.* Brussels: Solidar.

[18] Department of Business, Innovation and Skills (2014) *Review of the Balance of Competences between the United Kingdom and the European Union: Social and employment policy.* London: HM Government.

[19] Confederation of British Industry (2013) *op. cit.*

have to abide by the majority of EU regulations without having the power and influence of full members to shape those rules.[20] As *Financial Times* columnist Martin Wolf has argued:

> Gaining full access to EU markets while doing as it pleases is an option the UK cannot have. Its choice is this: more independence and less influence or less independence and more influence.[21]

Unintended consequences

While much is made of EU 'red tape', in the media and elsewhere, it is much harder to gauge other aspects of life in the EU that have come to be taken for granted. For example, many British companies now have strong links with businesses in other EU countries, either as trading partners or as vital supply chains, which might be difficult to unpick. Less apparent are the potential benefits to British citizens, significant numbers of whom have moved to other EU countries to live, work or study, including over 400,000 retirees. Others have bought second homes in places such as France, Italy and Spain, made easier with the introduction of cheap flights to these destinations, a benefit of a common transport market.

If we were to leave the EU and impose visa restrictions on people coming here from Europe, the status of these British citizens could be called into question. They too could lose access to welfare benefits or healthcare. Other countries may also impose visa requirements on people travelling from Britain, even for a short holiday. It is therefore possible that some of these current benefits could become new burdens.

It is also unclear what would happen to those directives that have become part of UK law. On a practical level, Britain has been a member of the EU for over 40 years. This means that there are many longstanding arrangements and agreements in place, many of which opponents of the EU would like to see unpicked if we were to leave. But the implications of this should not be underestimated: rescinding these laws and establishing new rules and regulations would put an enormous strain on government. And do we want to lose measures such as the Equalities Act or our minimum holiday entitlement as set out in the WTD (and 'gold plated' by the UK which has added bank holidays to the 20 days required by EU law)? Reneging on these agreements would not be uncontroversial, as recent debates around the future of the Human Rights Act have shown.

Social Europe

The idea of a European community has, since its earliest beginnings, also encompassed a belief that economic progress and social justice should go hand in hand. This European social model, rooted in the traditions of its founder members, particularly France and Germany, represents 'a vision of society that combines sustainable economic growth with improved living and working conditions'.[22] In this view, social

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[20] Miller V. *et al* (2015) *op. cit.*

[21] Wolfe M. (2014) 'No shelter for Britain in European halfway houses', *Financial Times,* 12 June 2014.

[22] European Commission Employment, Social Affairs and Inclusion Directorate (2011) *Buying Social: A guide to taking account of social considerations in public procurement.* Brussels: European Commission.

justice and solidarity are seen as important goals in their own right, as well as being essential to economic growth and competitiveness.

As the EU has grown, so has the tension between economic and social goals as new Members have brought their own needs, interests and traditions. As a result, Europe itself is changing. The financial crash and subsequent crisis in the Eurozone has led to an even greater emphasis on fiscal discipline, the austerity measures imposed on Greece being the most obvious example of this. Critics of the Transatlantic Trade and Investment Partnership between the EU and the United States have also suggested that this could tip the scales more in favour of the market and away from the European Social Model. The rise of far-right political movements in countries such as Hungary, Poland, Denmark and France could further unsettle the status quo.

It is unclear how far these developments will influence campaigns for and against Britain's continued membership of the EU. However, the key question is perhaps whether Britain benefits more from being on the inside, shaping and influencing these developments, or as an independent nation charting its own course.

A bigger picture?

Critics of the EU are right to call for reform. NCVO has long argued that EU institutions should be more transparent and accountable and less bureaucratic.[23] But if people are to make an informed choice in the referendum, then the assumptions and evidence on both sides of the argument need much greater scrutiny. In particular there must be more clarity about what leaving the EU would mean.

So far the debate has tended to focus on the detail of EU membership, on migrants and on markets. Much less has been said about the wider challenges facing Britain, and other countries, in an increasingly globalised world. One that is being shaped by forces that are beyond the control of national governments, whether it be the power of trans-national corporations or challenges such as climate change or terrorism. Is there a need to look at this bigger picture and ask whether Britain will have more influence, and be better able to protect its own interests, as an independent sovereign state or by working in partnership with others?

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[23] Etherington S. (2014) 'Europe: where are we now?', in NCVO *Towards a More Open Europe.* London: NCVO.

Part 2: Impact on the voluntary sector

There is unlikely to be a single voluntary sector perspective on the EU – different organisations have engaged with, or benefited from, it to varying degrees. Many have not been touched by it at all, at least directly. But the EU's underlying values of solidarity and social justice (and the European social model more generally) may strike a chord with many in the sector. This includes, for example, those concerned with tackling social exclusion or protecting vulnerable people and places. Others may have a more negative experience of the EU, perhaps because they have struggled to meet regulatory requirements or come up against onerous public procurement procedures. This section of the report looks at some of the issues most relevant to the sector: advocacy, public procurement, funding and solidarity.

Advocacy

The European Commission values voluntary organisations' advocacy role, rightly recognising that they have a legitimate contribution to make to policy debates, not least because of their ability 'to reach out to, empower, represent, and defend vulnerable and socially excluded groups, and trigger social innovation'.[24] The Commission understands that voluntary organisations:

- can bring a wider range of voices and interests into policy debates, including those of disadvantaged groups

- are experts in their field with a knowledge of good practice, based on their work at the grassroots

- can help to bridge the gap between the EU and citizens/communities.

It has introduced measures to enable voluntary organisations and other civil society organisations to engage more readily in debates about EU policy and practice, including, for example, a minimum eight-week consultation period. Funding is also available to networks representing organisations and interests from across Europe. Many UK organisations are involved in these networks. For example, Barnardo's and The Children's Society are both members of the YES Forum, a partnership of 34 voluntary organisations supporting children and young people in 18 EU countries. NCVO was instrumental in setting up the European Network of National Associations of Civil Society Organisations (ENNA) to share learning and raise awareness of the vital role the sector plays in Europe.

Critics have argued that EU support for advocacy has undermined organisations' autonomy and created 'sock puppet' organisations whose role is to bolster support for the European project.[25] Certainly it could be argued that voluntary organisations are more likely to focus on issues beyond the single market. However, a recent study of the impact of EU funding on organisations found no evidence to support such claims, instead arguing that this support for voluntary organisations enables a wider range of

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[24] European Commission (2012) Communication: The roots of democracy and sustainable development: Europe's engagement with civil society in external relations. Brussels: European Commission, p.3.
[25] Snowden C. (2013) Euro Puppets: The European Commission's remaking of civil society. London: Institute of Economic Affairs.

interests to be represented, including disadvantaged groups. Indeed, if funding was not available, 'the predominance of business interests and wealthy organisations at the EU level would be overwhelming.'[26]

Voluntary organisations bring a legitimate, independent perspective to local, national and international policy debates and they are right to speak up on issues that affect their beneficiaries. Some organisations have found that working at a European level, with their counterparts in other countries as well as with the European Commission itself, has been an effective way of furthering their aims. For example:

- the EU's support for action to 'combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation' (now enshrined in UK law through the Equality Act 2010) was the result of over 400 organisations from across Europe coming together to make the case[27]

- currently over 100 UK environmental organisations, with a combined membership of more than 8 million people, are making common cause with organisations across Europe to defend the nature directives being reviewed by the European Commission.[28]

Others have used EU standards to hold UK governments to account: in 2015 ClientEarth brought a legal challenge against the UK government on the grounds that it has consistently failed to meet EU air quality standards, a claim upheld by the supreme court.[29] Similarly, the Equality and Diversity Forum, representing equalities and human rights organisations in the UK, has argued strongly that the social protection afforded by the EU provides a vital backstop for vulnerable people.[30]

To understand the role of voluntary organisations in Europe it is useful to distinguish between means and ends: organisations have engaged with the EU in order to further their own aims, not to 'bolster support' for Europe. To comply with the law on campaigning and political activity charities will need to approach the referendum in the same way, explaining the costs and benefits of different outcomes to their beneficiaries and their charitable purpose (if they are to comment at all). Even so, they have the potential to make an important and relevant contribution to this most contentious debate, perhaps all the more so because they are only speaking on behalf of their charity and their cause.

Public procurement and state aid rules

EU Directives on state aid and public procurement are designed to promote fair competition within the EU. They are underpinned by the principles of transparency, non-discrimination and equal treatment (ie

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[26] Sanchez Salgado R. (2014) 'Rebalancing EU interest representation? Associative democracy and EU funding of civil society organisations', Journal of Common Market Studies, vol. 52, no. 2 pp.337–353.

[27] Anstead A. (2015) 'Why Europe is important for race equality' www.ukren.org/UKRENblog/58/Why-Europe-is-important-for-race-equality-in-the-UK.html (accessed April 2016)

[28] See for example RSPB 'Campaign: Defend nature' www.rspb.org.uk/joinandhelp/campaignwithus/defendnature/ (accessed April 2016)

[29] Harvey F. (2015) 'Supreme Court orders UK to draw up air pollution cleanup plan', *The Guardian*, 29 April 2015.

[30] Equality and Diversity Forum (2014) Equality and Diversity Forum Response to the Consultation on the Balance of Competences in Relation to Fundamental Rights. London: Equality and Diversity Forum.

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no bidder should be treated more or less favourably than any other). State aid refers to actions by public authorities that give an advantage to specific companies or sectors, eg offering tax reliefs or subsidies. Such actions are not generally allowed because they can distort competition.

For many years, labyrinthine EU public procurement rules have been blamed (rightly or wrongly) for many of the obstacles put in the way of voluntary organisations when tendering for contracts. However, recent changes to these rules, designed to make it easier for small and medium-sized enterprises (SMEs) to compete as well as to make the process simpler and speedier, should also help voluntary organisations. For example:

- there is a new 'light touch regime' for contracts for health, education and other social services that are less than €750,000, giving commissioners much greater flexibility and simplifying the process by which these contracts are awarded

- contracting authorities are encouraged to 'unbundle' contracts, breaking them up into smaller lots so that it is easier for SMEs to bid

- social and environmental objectives can be included, where these are relevant to the contract (eg promoting social inclusion or employment opportunities)

- contracts may be awarded on the basis of full lifecycle costs, ie where it can be shown that they could save money in the long term, even if they initially appear to cost more (although contracting authorities can still award contracts on the basis of lowest price)

- authorities are actively encouraged to consult with suppliers before contracts are awarded to 'facilitate better specifications, better outcomes and shorter procurement times' (thus addressing a cause of frustration for voluntary organisations whose closeness to their beneficiaries make them well placed to advise on service specifications)

- a new procedure, the 'innovation partnership', to allow suppliers to bid to work with the authority to develop a new service (again this could benefit voluntary organisations).[31]

The rules governing public procurement and state aid are highly complex. To illustrate this, a 2013 'FAQ' guide on exemptions from the European Commission runs to over 100 pages, making it difficult for those applying the rules as well as those affected by them to understand what is required.[32] This can create unnecessary barriers to implementation, either as a result of misunderstandings or because they are implemented in an unnecessarily restrictive or risk-averse way. Therefore if voluntary organisations are to benefit from these changes, commissioners will need to have clear guidance explaining the new rules and how to implement them.

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[31] Crown Commercial Service (2015) *A Brief Guide to the EU Public Contracts Procurement Directive (2014).* Liverpool: Crown Commercial Service.
[32] European Commission (2013) *Guide to the Application of the European Union Rules on State Aid, Public Procurement and the Internal Market to Services of General Economic Interest, and in Particular to Social Services of General Interest.* Brussels: European Commission.

The government has started to do this, but none of the guidance produced so far mentions the voluntary sector (although the guidance for SMEs does cover many of the issues that voluntary organisations face). There is very little guidance on 'unbundling' contracts and voluntary organisations continue to report an increase in the scale of public contracts that can be prohibitive of their participation in public services. Meanwhile, the UK's Public Services (Social Value) Act 2012 enabled social and environmental objectives to be included in tenders, but this has not yet been widely utilised.

Social enterprise

The new rules also make it easier for public authorities to use the 'light touch regime' to reserve certain contracts for mutual and social enterprises for a limited time (three years). This was a priority for the UK government, which wanted to 'enable fledgling public service mutuals to gain experience of delivering services before being exposed to EU-wide competition',[33] although the opportunity is open to all mutual or social enterprises that meet the criteria. Again, we look forward to the government producing guidance on this. More generally, the EU's Social Business Initiative (2011) aims to create a more favourable climate for social enterprise in Europe, by improving access to finance, including start-up funding and micro-credit, and by raising the profile of social enterprises.[34]

Referendum implications

The changes to the rules on public procurement and state aid suggest that the EU has begun to recognise the barriers faced by voluntary organisations wishing to provide public services, although there is still some way to go to change the commissioning culture. Looking ahead to the referendum, the question is, would this change if Britain were to leave the EU? If we were to remain, then it is clear that the UK would still be bound by EU directives on public contracts. But if we were to leave, then it is possible that these rules would still apply as a condition of the UK's access to the single market (although we would no longer have any say in making the rules). It is possible that a different settlement could be agreed, but it is unlikely that the principle of fair competition that underpins these rules would change. In any case, for the voluntary sector the question is not who makes the rules, but whether politicians and policymakers understand and are willing to address the barriers that voluntary organisations face.

European Structural and Investment Funds

European Structural and Investment Funds (ESIF) are used to further the EU's strategic agenda, currently Europe 2020. Funds are allocated to member states to: help promote economic competiveness; increase social cohesion; and reduce inequalities within and between regions. An aim is to use these funds to promote economic growth in areas affected by industrial decline, particularly where

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[33] Crown Commercial Service (2015) *op. cit.*

[34] European Commission (2011) *Social Business Initiative: Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation.* Brussels: European Commission.

private sector investment is lacking. In the UK, for example, this includes Cornwall, north-east England and west Wales.[35]

Voluntary organisations have a potentially vital role to play in meeting these objectives, particularly in relation to social inclusion and employability (20% of funds are ring fenced for social inclusion). Many voluntary organisations see that ESIF objectives fit well with their own, but lengthy, complex and bureaucratic application processes, including the need to find match-funding, have long been a barrier to accessing these funds. However, the problems they face are not solely a result of the way the EU administers these funds; additional barriers exist at national and regional levels.

In the UK responsibility for these funding streams is devolved, meaning that different programmes apply in the four nations. In England successive governments have opted for a co-financing model since 2001, using the funds to complement existing programmes such as the Work Programme. Potential benefits of this approach include less bureaucracy and a closer alignment of EU and nationally funded programmes and outcomes. In practice the tendency towards larger contracts and payment by results, often with high upfront capital requirements, has created new barriers for many smaller organisations (in the private as well as the voluntary sector).[36]

In the current ESIF programme (2014–20), local enterprise partnerships (LEPs) determine the priorities for their region. There is potential for voluntary organisations to contribute to this process: their strong roots in communities and knowledge of local needs make them well placed to contribute to local strategies and work effectively with people furthest away from the labour market. However, LEPs need to do more to engage with the sector in their areas if this potential is to be realised. Voluntary organisations can also apply for funding that supports the LEP's established priorities, via the Big Lottery Fund – an approach with the potential to improve voluntary organisations' access to EU funds.[37]

Is repatriation an option?

Some suggest that the ESIF is not an effective way of achieving its goals, an idea first mooted by Gordon Brown in 2003 and more recently championed by the thinktank Open Europe. An alternative would be to reduce the amount distributed by the EU, limiting it to the poorest member states, and the rest would be 'repatriated'.[38] Britain would then be able to keep much of what it pays in and have a greater say how this money should be used. To understand the implications of such a move it is useful to ask whether:

DCLG, DWP, DEFRA and BIS (2015) Guidance: England 2014-2020 European and Structural Investment Funds www.gov.uk/guidance/england-2014-to-2020-european-structural-and-investment-funds (accessed April 2016)[36] Shiel F. and Breidenbach Roe R. (2014) *Payment by Results and the Voluntary Sector*. London: NCVO.

[36] Shiel F. and Breidenbach Roe R. (2014) *Payment by Results and the Voluntary Sector*. London: NCVO.

[37] www.biglotteryfund.org.uk/esf

[38] Swidlicki P., Ruparel R., Persson M. and Howarth C. (2012) *Off Target: The case for bringing regional policy back home.* London: Open Europe.

- the British government could play a similar role, channelling resources to the poorest communities, more effectively
- ESIF benefits the UK in other ways, eg by creating new markets for UK products or facilitating cross-border collaboration between companies, as the CBI has suggested.[39]

Is there a need for a wider debate about the role of ESIF and how this could work more effectively? If so, the experience of voluntary organisations in promoting social inclusion and increasing employability and skills, particularly those who have received ESIF funding, should be an important part of that debate.

Other EU funding

UK voluntary organisations are eligible to apply for funding from programmes run by individual directorates of the European Commission. For the period 2014–2020 this includes:

- €439m earmarked for the Rights, Equality and Citizenship programme aimed at promoting non-discrimination and preventing violence against women and children
- €919.5m for the Employment and Social Innovation programme
- €1.3bn for the Creative Europe programme to support small and medium-sized cultural enterprises
- €14.7bn Erasmus+ programme focusing on education, training, youth and sport.

It is clear that some voluntary organisations have benefitted from these programmes, in part because there is an overlap between the sector's longstanding interest in social justice, social innovation and solidarity and the wider goals of 'social Europe'.

The NCVO Almanac analysed general charities' accounts and estimated that £220m was received from the EU in 2012/13, the latest year for which data is available.[40] Other sources show, for example, that between 2007 and 2011 over 200 UK organisations, including ACT Community Theatre and Battersea Arts Centre, participated in trans-national projects funded by the EU Culture Programme.[41]

Solidarity

Engaging in Europe can be an opportunity for voluntary organisations to learn from each other, share good practice and make common cause with organisations in other countries who share their mission, vision and values. Given that many of the issues that voluntary organisations are concerned with, from child poverty to public health, are not country specific, there are real advantages in working at a trans-

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[39] Confederation of British Industry (2013) *Our Global Future.* London: Confederation of British Industry, p.12.
[40] NCVO UK Civil Society Almanac: data.ncvo.org.uk/a/almanac15/government. Note that the data do not allow a breakdown between ESIF and other EU funding streams. This is also likely to be an underestimate given that some voluntary organisations fall outside NCVO's general charities definition and some EU funds may be received indirectly via UK government programmes.
[41] DCMS (2013) *Review of the Balance of Competences between the United Kingdom and the European Union: Culture, Media and Sport.* London: HM Government, p.5.

national level. For example, disabled people's organisations can look at what is happening to support disabled people in other countries and use this to secure improvements in their own.

The EU's lifelong learning programmes, such as Leonardo, Grundtvig and Erasmus (now all part of Erasmus+), have helped to facilitate links between organisations in different EU countries by funding exchange visits and collaborative projects. The European Years programme, which raises awareness of a particular issue each year, has also helped to widen the participation of voluntary organisations in Europe and to share learning between organisations and sectors and give a voice to the people those organisations work with, including people in poverty and other disadvantaged groups.[42] For example:

- the 2003 European Year of Disabled People helped to establish the Business and Disability Network, bringing together the European Disability Forum and several major European companies (including IBM, Schindler and EDF) to 'reflect and contribute to a better integration of people with disabilities in the business sector, providing disability advice and expertise to other companies'.[43]

- the 2011 European Year of Volunteering drew attention to the value of volunteering and its contribution to wider EU policy goals, such as social inclusion and employability, and to programmes such as Erasmus+, which now provides opportunities for young people to volunteer abroad and supports peer learning by youth organisations from different countries.

A key question is whether the learning from these programmes has become more deeply embedded within the EU, or individual member states, and therefore whether they have left a more lasting legacy. There have been some positive developments, particularly in those countries coming new to these issues, and benefits for those organisations directly involved.[44] But it is not clear how far they have reached nor how much difference they have made in the longer term, particularly at grassroots level. And if Britain were to leave the EU it is possible that other ways would be found to forge links and create solidarity across national boundaries.

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[42] Flanagan T. and Chanan G. (2013) *Social Inclusion: The Citizen's Journey through European Years.* London: Volonteurope.
[43] European Disability Network 'Business and disability' www.edf-feph.org/Page.asp?docid=13375&langue=EN (accessed April 2016)
[44] Deloitte (2012) 'Evaluation of the European Year of the Volunteer 2011 final report' ec.europa.eu/citizenship/pdf/eyv_final_report_en.pdf

Conclusion

The EU today seems to have a better understanding of voluntary organisations, the benefits they bring and the barriers they face, than it may have done in the past. The European Commission has made a clear case for engaging with civil society, it understands the sector's role in bringing different voices and interests to policy debates and has taken steps to make it easier for those voices to be heard. Changes to public procurement rules, particularly the new 'light touch regime', should also make it easier for voluntary organisations to deliver public services. And in the new round of EU funding, the role of voluntary organisations in helping to address social exclusion continues to be recognised. These steps are very welcome, particularly in the current climate. However, they are not entirely dependent on membership of the EU: NCVO would continue to press for government recognition of the sector's 'voice' role and its potential contribution to public services if Britain were to leave.

Beyond this, there is very little evidence to judge whether EU policies and directives have had an impact on voluntary organisations, positive or negative. Therefore for the sector as a whole it is hard to say how life would change if we were to leave the EU. However, this might be a more pertinent question for particular sub-sectors: how would life change for children's charities, for example?

This is an aspect of the debate that has yet to be aired and it is perhaps one where voluntary organisations can make the most useful contribution. Not by taking a stand for or against remaining in the EU, but by thinking through the potential benefits and risks of either option for their charity and its beneficiaries, and then communicating these, where appropriate, in line with guidance from the Charity Commission.

Appendix 1: A guide to EU decision making

Although the scope of EU competence has increased over the years, there are also limits to its powers.

- The strategy that governs the EU agenda has to be agreed by heads of government of member states, through the European Council.

- Specific policies and legislation must be agreed by national government ministers, through the Council of Ministers.

- Elected members of the European Parliament (MEPs) have a veto on both.

Therefore ultimate responsibility for decision making rests with national governments and MEPs, rather than 'Brussels bureaucrats'. But because most decisions are decided by a system of 'qualified majority voting', an individual government may have to comply with legislation it does not agree with (see below).

The extent of the EU's powers also depends on the nature of the issue. For example, all national governments have an overriding responsibility to promote sound public finances, with particular responsibilities given to members of the eurozone. Decisions that are covered by EU treaties, including those related to the single market, are subject to EU law. This means, for example, that it has strong competences in relation to competition policy and the free movement of services and capital, as well as over labour market standards and equalities. In other policy areas, such as social welfare and social exclusion, the EU's role is to coordinate rather than coerce. It sets common policy objectives, but member states have considerable discretion as to which objectives they will focus on and how they will interpret them, with '(very) soft recommendations for non-compliance'.[45]

EU institutions

The **European Council**: Government leaders of each member state meet quarterly to set the broad strategic direction of European Union policy.

The **European Commission**: The EU's 'civil service' develops and proposes policies to take forward the agenda set by the European Council and oversees their implementation if and when they are agreed by:

- the **Council of Ministers (Council of Europe)**: Government ministers from each member state meet to discuss and agree EU legislation and coordinate their own policies

- the **European Parliament**: 751 directly elected MEPs appoint and oversee the European Commission, agree its budget and have the power to agree or veto laws proposed by the commission.

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[45] de la Porte C. (2012) 'Social OMC's: Ideas, Policies and Effects' in *Routledge Handbook of the Welfare State.* Abingdon: Routledge.

Qualified majority voting

Most EU decisions are **agreed** by a system of qualified majority voting. This means that at least 55% of member states (16/28) representing at least 65% of the EU's population must vote in favour. This is known as a 'double majority'.

A decision can only be **blocked** by a minimum of four countries representing at least 35% of the EU's population.

EU Law

Primary legislation, binding on all member states, is set out in **treaties** agreed by the European Council (heads of government).

Secondary legislation is agreed by the European Parliament and Council of Ministers to achieve objectives set out in the treaties (it cannot go beyond these). Secondary legislation consists of:

- **regulations** that are binding on member states and enforceable by law
- **directives** that set goals for member states but leave it to them to determine how they will achieve these.

The **European Court of Justice** is responsible for interpreting and enforcing EU law.

Stability and Growth Pact

Rules designed to ensure that member states pursue sound fiscal policies; there is a binding commitment on all members to follow these rules.

Open Method of Coordination (OMC)

The OMC encourages cooperation between member states to meet common challenges, eg reducing poverty and social exclusion, on policy areas that are beyond the competence of the EU.

The aim is to encourage mutual learning and improve practice in these areas, primarily through a system of peer review and support, without challenging national sovereignty. National governments determine which objectives they will pursue and how they will interpret them; there are no sanctions for non-compliance.

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