

DISCUSSION PAPER

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**Scotland and the EU:
What impact of the potential
in-out UK referendum
on the independence debate?¹**

On 18 September, Scotland will vote on whether it becomes an independent country. In case of a Yes, the relationship between Scotland and the EU will be one of the crucial areas of debate and negotiation. But assessing the future relationship between Scotland and the EU is fraught with uncertainty and speculation. Not only are there many issues yet to be resolved, from the Scottish independence referendum to the UK's potential EU in-out referendum, in addition the situation itself is unprecedented, including the potential process of becoming a full EU member.

How has the EU issue featured in the independence debate and what impact might it have on voting? While the UK referendum is uncertain, the Conservative promise of an in-out referendum by the end of 2017 if the Conservatives win an outright majority in the next general election has, at the very least, made a UK exit a possibility. Labour has not committed to this referendum timetable, but as stated in British media, they "would 'guarantee' an in-out referendum if the UK was being asked to transfer more powers to Brussels". Thus an in-out vote in the UK at some point in time seems certain, with a strong political momentum for such a vote. As the Scottish independence vote is inextricably bound to the potential UK in-out referendum (and thus a potential exit of the UK from the EU), there are some potential feedback loops to the independence debate. These are set to be relevant regardless of whether Scotland becomes independent or not.

Scottish independence and the question of EU membership

The question of whether an independent Scotland would become an EU member, the process and timing, and what membership would imply has played a prominent role in both the Yes and the No (Better Together) campaign. There is much legal and political uncertainty and debate on the process of becoming a member, the Euro, the participation in Schengen and the various UK opt-outs and special arrangements such as in certain areas of Justice and Home Affairs, or with regard to the budget rebate.

In part, this has been couched in terms of a legal debate: whether Article 48 or 49 TEU will be the basis of membership negotiations. Unsurprisingly, both sides of the referendum have expressed very different views. The Scottish Government's White Paper on independence argues that the Treaties could be amended to allow EU membership at the point of independence, while the No campaign has argued that Scotland would have to reapply to join, a view shared by the President of the European Commission, Jose Manuel Barroso, who expressed his view that "any new independent country would have to apply to join the EU".

Regardless of the legal questions, the process for an independent Scotland to become an EU member is in essence a political one, requiring negotiations at EU level. This has led some to conclude that political considerations will ease Scotland's path into the EU.

"Whatever the technical legal arguments around Scotland's succession rights, it is unlikely to outweigh the EU's political interest and established practice."

Stephen Maxwell

However, negotiations might not be easy, crucially involving all other Member States (including the UK government) and the European Parliament, as well as the European Commission. In the

end, the separation agreement between London and Edinburgh is likely to be of crucial importance in determining the timing and process of membership. An amicable, mutually agreed separation would raise far fewer concerns, while an acrimonious and unilateral split would raise fears of similar developments back home.

If Scotland shows itself to be a 'good European' it might help to convince the rest of the EU's Member States that Scotland is a partner worth having, especially in light of a potentially increasingly awkward relationship with the UK. The European Parliament and the Commission are also likely to take such considerations into account: they are unlikely to be predisposed to opt-outs and special treatment, given that they consistently argue against such arrangements for existing Member States. If Scotland were to seek special treatment in relation to membership conditions and the implementation of EU policies, it would also make it easier politically to block Scottish aspirations on such grounds, as this is more justifiable than apprehensions or concerns about setting an independence precedent – i.e. 'blocking' Scotland on policy / accession matters might serve to mask deeper concerns concerning the spread of 'divorce' to other Member States.

The general presumption would be that Scotland would have to accept the body of EU law (the *acquis communautaire*) in its entirety, including a commitment to eventually join the Euro. In practice, an independent Scotland could not be forced into introducing the Euro, as it could avoid fulfilling the conditions for membership, as demonstrated by Sweden.

With regard to Schengen, it is unlikely that there would not be some form of compromise, enshrined in a protocol, which would temporarily suspend Schengen for Scotland while there was still a border-free travel zone with the Rest of UK (RUK) – it would be paradoxical if a new physical border was created in the process of accession. In this context, it should be recalled that accession of a country to the EU includes ratification of the accession treaty, which could incorporate such provisions if agreed *a priori* in the negotiations.

There is also likely to be a number of areas where there would be some transition agreements, depending on the outcome of the negotiations, for example with regard to the applicability of the UK budget rebate where the current Multi-Annual Financial Framework will run until 2020. It is also conceivable that the number of Scottish MEPs (which would increase under the degressive proportionality rule) would only be adjusted at the first European Parliament election following accession to avoid adding a greater number of new MEPs immediately. The new Scottish Commissioner (who would most likely take office during an already running term of the Commission) is also unlikely to get a meaningful portfolio until the appointment of the subsequent Commission which enables a reshuffle of policies across Commissioners.

In the long term it is likely that the various transition solutions would expire, for example with regard to the budget rebate or seats in the EP. This would not necessarily be to Scotland's disadvantage. The expiry of the rebate could coincide with significant new spending at EU level in areas which benefit Scotland, on areas such as energy infrastructure where there is likely to be a strong policy focus at the EU level.

There would also be a number of provisions which would apply to Scotland immediately on accession, most notably the new EU-wide economic governance arrangements. While this would not apply to the Fiscal Compact² or governance changes which only affect the Eurozone countries, there would be a requirement to keep a tight fiscal reign. It is virtually impossible to determine whether the fiscal position in Scotland would be better or worse than in RUK (depending for

example, on the price of oil, the division of debts and assets after independence, independence transition costs and separate spending and taxation decisions on both sides of the border). However, the new fiscal rules imply that there is a good probability that there would be some limitations on Scottish government spending and borrowing.

If the UK chooses to stay in the EU, at face value there would be no pressure for Scotland to change the arrangements made at accession. However, there is a degree of marginalisation implied by being outside the Eurozone. Many decisions would be taken where Scotland (and the RUK) would not have a voice. This trend is likely to intensify as more countries join the Euro – for example, Latvia just joined despite of the crisis, Lithuania has set a target date for Euro accession and Poland is seriously considering this option. Unless the UK changes its stance to the Euro, which seems unlikely, the question of Scottish Euro membership is likely to re-emerge, in an EU where there will be only a handful of countries outside the Eurozone.

If there is going to be a Scottish 'No' and assuming the (likely) further devolution of fiscal powers to Scotland, these powers might be restricted by EU economic governance changes. One of the key implications of the stricter fiscal discipline at EU level is that it effectively restricts regional fiscal autonomy – in essence, regions with fiscal powers will have to follow agreed national limits. While the UK is unlikely to implement all elements of the new governance (e.g. the Fiscal Compact is unlikely to be ratified), some of the elements, such as the excessive deficit procedure, will apply. This can potentially affect for example, borrowing of a fiscally autonomous Scotland if Edinburgh's powers were extended that far.

Impact of EU membership on the Scottish electorate

The key reason why there has been such a focus on EU membership in the campaigns is that both sides believe that it will have an influence on the final voting intentions. In line with other independence movements in Europe, the SNP has argued that realistically, independence 'in Europe' is the only economically feasible option. While the SNP now argues that post-independence many 'Unions' could continue with the rest of the UK, this is disputed by the 'No' campaign and would also, to some extent rely on the shared provisions of EU membership, e.g. in terms of mutual market access.

There is also a general belief that Scotland is better disposed towards the EU than the South of England in particular. This is linked to an argument that any anti-EU sentiment is imposed on Scotland by parties which do not have political legitimacy in Scotland.

"There is an overwhelming consensus in Scotland in support of EU membership ... For more than half of my life, Scotland has been governed by parties which could not command a majority in Scotland... It now poses a real threat to Scotland's place in Europe... For Scotland, becoming an independent nation is the only way to secure our place in the EU."

Alex Salmond

Feedback loops: what relationship to the UK in-out referendum?

"Overhanging any discussion of Scotland's future in the EU is, of course, uncertainty about the position of the whole UK."

Gavin McCrone

So with a possibility that there is an EU exit of the UK, it could have an impact on the Scottish referendum if voters see this issue as a crucial question and feel strongly about it, depending on how high they assess the probability of an exit.

"The really interesting question would be what Scotland's attitude might be if the rest of the UK voted in a referendum to leave the EU... If in advance of the Scottish referendum, it seemed likely that the UK was to leave the EU, which could become a factor in the referendum debate. Those who regard continued EU membership as important and in the best interests of Scotland and its economy might then be more likely to favour independence."

Gavin McCrone

Implications of a UK exit for an independent Scotland

On two key areas – Schengen and the Euro (if an independent Scotland remains in the Sterling area) – the long term future for Scotland would crucially depend on the choices made in the RUK in relation to EU membership.

In the event of a UK exit, RUK is likely to face some restrictions on entry into the Single Market. Scotland would then also need to go through a difficult process of imposing restrictions on English goods and services, potentially imposing very substantial costs on the Scottish economy, given its close economic interrelationship between Scotland and RUK.

There is also a further feedback loop linked to the question of currency and wider economic governance in the EU if an independent Scotland retained Sterling.

"Were the UK to leave the EU, it would raise important questions for Scotland, whether Scotland remained within the UK or sought independence. Within independence-based models, the currency question would of course take on added complexity."

Andrew Goudie

The proposal from the 'Yes' campaign is that an independent Scotland would keep Sterling as its currency, entering a currency union with the rest of the UK (although this possible arrangement has been strongly objected to by the rest of the UK). This is not envisaged by the Scottish Government, to clash with EU provisions: for example in 2013 the Scottish Government stated that its participation in the Sterling Area would not "conflict with wider obligations under the EU treaties". However, if the rest of the UK left the EU, it raises an intriguing question: Would continuation in the Sterling Area be compatible with EU membership if the UK was not a member state?

If UK economic policy starts diverging post exit, it is difficult to envisage how an independent Scotland with the British pound as its currency could fulfil the conditions of that currency union, while at the same time applying the economic governance conditions arising from EU membership obligations. Being part of the European Union includes the adoption of an economic policy, based on close coordination and including the guiding principles of stable prices, sound public finances and monetary conditions and a sustainable balance of payment (article 119 TEU). What this entails is set out in more detailed legislation, including the legislation which has created a new economic governance system in response to the Eurocrisis, mainly focusing on public finances. In addition, there is a number of provisions regarding the national Central Bank, implying, for example, independence (article 131 TEU), as well treating its exchange rate policy as a matter of common interest (article 142 TEU). This scenario would thus imply that the question of Eurozone membership would strongly reassert itself for an independent Scotland if the UK left the EU.

This could create a further feedback loop if Scottish voters are opposed to the introduction of the Euro. However, it is a very complex argument, fraught with uncertainties, so it is unlikely that voters will take it into account when deciding on how to vote in the independence referendum.

The UK referendum in light of the Scottish referendum

If there was a 'Yes' in the Scottish referendum, this could well have impacts on the likelihood and outcome of a potential UK in-out referendum. In terms of the likelihood of such a referendum, a Scottish exit from the UK would force Labour to compete very aggressively for votes in the more Eurosceptic South of England, making an EU in-out referendum much more likely. A Scottish exit would most likely also lead to a more Euro-sceptic Conservative Government in RUK, committed to such a referendum. A Scottish exit, involving negotiations of Scottish EU membership, might also make it difficult for the UK to renegotiate its terms simultaneously, making it harder to win an UK referendum (although the accession process might also be an opportunity to introduce some changes to the UK-EU relationship).

In addition, if it is true that Scottish voters have distinctly different preferences around EU membership and that these would make it more likely that they would vote 'Yes' in an in-out referendum, a Scottish exit might well tip the balance in an UK in-out referendum. Together with the feedback loop detailed above, this could lead to a self-fulfilling prophecy if voters care enough about the issue or if they feel that undesirable choices are imposed on them by London: a higher likelihood of an EU exit of the UK would lead to a Scottish 'Yes', which in turn would lead to a higher probability of an UK exit from the EU.

There are also significant implications of such a potentially separate voting pattern in the event of a Scottish 'No'. If an EU in-out referendum produced a different vote in Scotland (Yes to EU membership) than in the rest of the UK (No to EU membership), it would re-open the whole Scottish independence debate even if there had been a Scottish 'No' to independence. However,

it is not certain that the strength of feeling about the EU is so different between Scotland and the rest of the UK.

"Whether it is true, as is commonly asserted that Scotland is less Euro-sceptic than England, is not really clear. Some polls have given results that appear to support this... But whether this would result in Scotland voting one way in an in/out referendum and England the other is far from certain."

Gavin McCrone

Conclusions

There are many uncertainties in the future relationship of Scotland and the EU, not only caused by political and legal uncertainty associated with possible Scottish independence but also with the changing nature of the EU and the potential changes in the UK-EU relationship, most notably through the possible in-out referendum.

It is, however, clear that there are many linkages between Scotland's referendum on independence and the potential UK in-out referendum on the EU.

The feedback loops make it more likely that Scotland would vote for independence if there is a strong likelihood that the UK leaves the EU – mainly due to the differing EU preferences in Scotland, and because Scots might well feel that an undesirable choice is imposed on them. Arguably, the results of the European Parliament elections might have strengthened the independence campaign, as, despite the one Scottish MEP for UKIP, support for an EU exit appears to be significantly lower in Scotland than in the rest of the UK. In addition, the marginalisation of the UK in the appointment procedure for the new Commission President and the increasing electoral threat from UKIP, now potentially challenging for a Westminster MP, could boost the 'Yes' vote in Scotland, albeit that this will only be one factor among many which will determine the voting outcome.

A Scottish 'Yes' would also increase the likelihood of a UK exit, which in turn would make Scottish voters more likely to vote 'Yes' to independence in anticipation. The question of currency is likely to be a future issue for an independent Scotland whether the UK stays or leaves the EU, with the question of Euro membership likely to reassert itself in future.

If Scotland votes 'No', a UK referendum on EU exit would, most likely, re-open the independence debate, especially if it results in an 'out' vote.

"Scotland in future is likely to remain in the EU, either as an independent country or as part of the United Kingdom. But the Scottish vote could affect whether the rest of the United Kingdom stays in the EU."

Graham Avery

The Scottish independence vote when seen from a European perspective is thus inextricably bound to the potential UK in-out referendum despite the Scottish referendum preceding a potential UK referendum. For the debate in Scotland, when considering the potential future relationship of Scotland to the EU – whether independent or not – it is thus essential that the impact of the likely UK referendum on EU membership is factored into the considerations.

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- 1 This article is an amended version of an article to be published in the forthcoming volume 'Secession in EU-Member States, Trends, Strategies, Political and Legal Framework', vol. 4 in the Foster Europe International Studies Series with the StudienVerlag Innsbruck/Austria and Transaction Publishers NJ, USA.
 - 2 The Fiscal Compact currently only applies to those who voluntarily sign it, so Scotland would have a choice here, although there are plans to integrate the Compact into EU law.

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