

The EU would not eject Scotland for becoming independent

Would the European Union (EU) eject Scotland if it became independent? [Daniel Kenealy](#) argues that this would not be the case: To push Scotland out and deprive those in Scotland of EU citizenship because they exercised a democratic right is simply not in the EU's makeup, he believes.



The issue of a post-independence Scotland's position within the European Union (EU) is causing considerable debate. There is only one certainty though: no-one can say for sure what will happen. There is no legal or political precedent for a region within an existing EU Member State becoming, itself, an EU Member State. The present state of the debate is highly politicised. Those advocating independence tend to align themselves with the argument that automatic continuation of EU membership for an independent Scotland is a given. That is hardly surprising as it serves the broader purpose of making independence seem far less revolutionary than it might.

Those on the other side are more likely to make the case that Scotland will find itself having to apply for EU membership. Few argue that Scotland would not be successful in this application. Indeed the negotiations for membership would likely take place in parallel to negotiations with the UK about the precise details of independence. Thus Scotland is unlikely to spend a single day outside of the EU unless, of course, its democratically elected and accountable government chooses to.

To reiterate: nobody knows for sure what is going to happen. But there are prudential ways of trying to reason through likely developments and imprudent ways. Unfortunately much of the political dialogue on the issue currently comprises mere assertions. There are, for instance, *assertions* that the Spanish would seek to torpedo Scottish membership because of the fear it might create a precedent for regions seeking independence. Is there evidence for this? No. There are, for instance, *assertions* that Scotland's continuing membership is virtually beyond doubt. Is there evidence for this? No.

So what is there evidence for? There is evidence that the EU cares a great deal about citizenship. Every person holding the nationality of an EU Member State is afforded EU citizenship as well. As Aidan O'Neill QC has written, this issue would likely be deemed of vital importance should a post-independence Scotland find itself making a case for continuing EU membership in front of the EU Court of Justice. But it may well weigh heavily on the EU Member States as they seek to resolve the problem posed by an independent Scotland through political mechanisms. And this is because of its connection to another concept that the EU cares very deeply about, namely democracy.

Democracy is one of the principles set out at the beginning of the EU Charter of Fundamental Rights. The EU prides itself on being a normative power and seeks to promote democracy in the near abroad as well as the global system. While academics disagree about the real motivation of this commitment – is it genuinely normative and liberal or merely window-dressing for more material interests – nobody argues with the rhetorical commitment.

So there is an issue of what sociologists call ontological security at stake here for the EU. Put simply it is hard to see how the EU can champion the cause of democracy day in, day out, and then deprive those living in Scotland of their EU citizenship as a consequence of exercising a democratic right to vote for independence. It would be virtually impossible, politically, for the EU to square that circle and maintain its coherency as a champion of democracy.

For those who would seek an answer to the question of a post-independence Scotland's EU status in the realm of public international law I would caution against it. The EU is an exclusive club of states that, through various rulings of the Court of Justice, has been endowed with quasi-constitutional status. In a famous ruling of 1964 – *Costa vs. ENEL* – the EU's Court established the primacy and supremacy of community law over other forms of law. The rules of the club are determined by its members and there is little reason to think that will not be the case should Scotland become independent.

All of this excludes the economic reality that if Scotland, as a fully embedded member of the largest internal market in the world, were forced out of the EU only to reapply then the EU would create an incredibly unnecessary headache for all concerned. For sure there will be housekeeping negotiations – how many seats would Scotland have in the European Parliament – and also institutional tinkering – Scotland would need a European Commissioner – but that is a very different thing to having to reapply for membership.

But I do not think we need to base a claim to continued Scottish membership of the EU on such economic factors (important though they will be). To push Scotland out and deprive those in Scotland of EU citizenship because they exercised a democratic right is simply not in the EU's makeup.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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