

While an independent Scotland would undoubtedly be able to join the EU, the timing and terms of membership remain uncertain

LSE blogs.lse.ac.uk/europpblog/2014/07/21/while-an-independent-scotland-would-undoubtedly-be-able-to-join-the-eu-the-timing-and-terms-of-membership-remain-inherently-uncertain/

21/07/2014

*One of the most controversial arguments in the context of Scotland's referendum on independence is the issue of whether an independent Scotland could make a seamless transition to EU membership and under what terms it would be able to join. **Daniel Kenealy** writes that while the issue has been the subject of bitter disagreements between the Yes and No campaigns, the reality is that most of the key uncertainties are simply impossible to resolve until after the referendum.*



On 15 July, Jean-Claude Juncker, the European Commission president-elect, made a statement to the European Parliament in which he announced a freeze on EU enlargement for the term of his presidency. Within hours his words had become **weapons** in the armoury of Better Together, the campaign for Scotland to remain in the UK in the upcoming Scottish independence referendum.

Here, they said, was further proof that an independent Scotland would be outside of the EU. Nicola Sturgeon quickly rebutted **arguing** that Better Together had 'grossly distorted' Mr Juncker's comments. The final twist came as a spokesperson for Mr Juncker **made it clear** that he was referring only to those countries currently listed as candidate countries (Albania, Montenegro, FYR of Macedonia, Serbia, Turkey, Iceland). This was, in the context of the referendum, a particularly small storm in a rather small teacup.

It is regrettable, although unsurprising, that Mr Juncker's words triggered off such a series of claims and counter-claims. Instead of digesting his words and thinking them through carefully and critically, Better Together was ready, on a coiled spring, to leap into action with a standard pre-scripted narrative about how a vote for independence would create uncertainties. To be clear the pro-independence camp are little better. Although accepting that EU membership for an independent Scotland could not be automatic there remains a stubborn refusal to honestly discuss the practical difficulties inherent in Scotland's transition to full Member State status. The Scottish Parliament's European and External Relations Committee (full disclosure, I was expert adviser to that committee) gathered what I believe to be the most comprehensive **set of evidence** on the topic to date. Yet, regrettably, the committee report **fell victim** to the politics of the referendum with numerous divisions, dissents, and questions concerning its legitimacy.

The issue has become nothing more than grist to the mill of two campaign meta-narratives. For Yes Scotland the EU is – along with the pound sterling, the Queen, and the various other forms of shared assets that the SNP claim will be retained – one of the many structures in which an independent Scotland will continue to be embedded. It thus serves as a symbol of continuity. For Better Together the EU issue represents little more than another element of uncertainty and risk. We are stuck in a cycle of competing statements, each serving a political meta-narrative. My colleague Professor Charlie Jeffery has written about the politics of these strategies **here**.

A more sensible and informed examination of the question would lead to the conclusion that there are few certainties. Amongst those certainties are that first, EU membership for an independent Scotland will not be automatic because, as a minimum, the existing treaties will need to be amended. Second, irrespective of the legal mechanism (on which Graham Avery offers a neat summary **here**) through which an independent Scotland joins the EU, all 28 EU Member States would hold a veto.

Third, Scotland is not 'fully compliant' with the EU's *acquis* (the body of common rights and obligations binding on all Member States). At present Scotland is, in several key areas, only compliant by virtue of being part of the UK and

thus covered by the UK's institutions and regulatory structures. Finally, the timetable of eighteen months (between a referendum on 18 September 2014 and a proposed independence day of 24 March 2016) remains an optimistic one.

A little more can be added to these points. It is crucial to understand that the EU generates a whole host of reciprocal rights and obligations between its Member States and its citizens. The notion that these can be suddenly severed without generating severe economic dislocation is nonsensical. The overriding priority for all Member States, in the event of Scotland voting for independence, will be to avoid any hole emerging in the existing single market. Failure to do so would, as Sir David Edward has [pointed out](#), lead to uncertainty and chaos for all non-UK EU citizens living, working, and studying in Scotland and EU companies doing business in Scotland.



Scottish Parliament, Credit: Wojtek Gurak (CC-BY-SA-3.0)

It has been commonly asserted that the Spanish – given the situation in Catalonia – would use their veto to send a message to domestic constituents. Whilst this cannot be ruled out, Spanish government officials [have said](#) they would not interfere. Furthermore, to suggest that the Spanish government would act on a single motive is to oversimplify politics. Just as important in their calculations would be the fate of their citizens in Scotland and their fishermen in Scottish waters.

Following a vote for independence, it seems clear that David Cameron would be asked to brief his colleagues at the next European Council meeting he attended. Part of that briefing would, most likely, include a proposal for how to handle Scotland's transition. The precise legal mechanism through which this would be done is a second-order question. It is the politics that counts. And the politics of the negotiations would be very complicated. Scotland's EU partners would be entitled to ensure that the institutions of the new Scottish state were in place and sufficiently robust to ensure EU regulations and laws were fully implemented. And the Scottish Government would want to ensure that it got the best membership deal for its citizens.

The Scottish Government, according to their [White Paper](#) and supplementary [EU paper](#), would seek to retain all of the special provisions and opt-outs currently enjoyed by the UK. It is highly unlikely that all of these would be secured. The impracticality of erecting an internal border within the British Isles suggests that an opt-out on Schengen – thus allowing Scotland to remain within the long-established Common Travel Area – would be forthcoming.

A formal opt-out on the euro (currently enjoyed by only the UK and Denmark) is less likely. The signal that such an opt-out would send at a time when the Eurozone remains fragile is unlikely to be welcomed by many Member States. Yet, as my colleague Drew Scott has rightly [observed](#), even without a formal opt-out a state cannot be forced to join the single currency. Then there's the UK's much despised budget abatement (commonly called 'the rebate'). The notion that Scotland would be able to negotiate for itself a share of the UK's abatement and a continuation of that practice into the future is highly doubtful. The bottom line on the opt-outs thus may end up being: a concession to Scotland on Schengen; a fudge for Scotland on the euro; and a price to be paid by Scotland on the rebate.

These are just some of the issues that would have to be resolved by Scotland and its EU partners. Indeed, many issues (e.g. currency arrangements, shared regulatory frameworks) would have to be resolved between Scotland and the government in London before the EU could truly engage. And then whatever deal is reached has to be

ratified in each of the 28 Member States. Thus the eighteen-month timescale is highly ambitious.

Consider that the most rapid completion of the accession process to date was the 1995 enlargement in which negotiations were completed in thirteen months with ratification taking a further ten months. It would thus be advisable for all sides to start thinking about appropriate bridging arrangements. I have little doubt that an independent Scotland will take its place in the EU, but the precise terms remain less certain and the likelihood of it being able to do so at the moment of its independence is quite unlikely.

As far as the politics of the referendum are concerned the EU issue remains, as my colleague Jan Eichhorn and I have [argued](#), one that neither divides nor animates voters. It's probably time to leave the issue alone as no further clarity can be brought to it before 18 September.

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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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