

# The EU's Scottish question

**Fabian Zuleeg**

Chief Economist and Chief Executive

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*“The country [UK] appears deeply divided, between different population groups and geographically, with London, Northern Ireland and Scotland voting strongly to remain in. At the very least, this raises the spectre of Scottish independence again, with the political future of the continuation of the UK now in doubt.”<sup>1</sup>*

*“In a world of great trading blocks, the EU is the best means we are ever likely to have for expanding free trade while preserving social protections. In an age where the voices of protectionism and intolerance often seem to be getting louder, the EU amplifies our own support for openness, diversity and human rights. And at a time when the rules-based international order is being threatened, the EU exemplifies the value of co-operation and solidarity.”<sup>2</sup>*

## BACKGROUND

### A dis-united Kingdom?

One of the unintended consequences of the Brexit vote almost three years ago has been the re-opening of the question of the United Kingdom's territorial integrity. Most of the focus has, naturally, been on Northern Ireland, given the historical context and the challenge a hard border would constitute for the peace process. With Ireland being a member state, the European Union (EU) has done everything to try to find a sustainable solution to keep the border frictionless, including insisting on a backstop arrangement.

Less attention has been paid to the situation in Scotland, not least since the historical context is very different. Yet Scotland voted strongly against leaving the EU: 62% of Scottish voters voted remain, while only 38% voted to leave<sup>3</sup> – a higher remain vote than in Northern Ireland. Every single one of the 32 Local Authority areas in

Scotland returned a majority for remain. If anything, this sentiment has become stronger, with polls suggesting that two-thirds of Scottish voters now support remaining in the European Union.<sup>4</sup>

### An independent Scotland?

In the current constitutional set-up, Scotland would have no choice but to leave the EU together with the rest of the UK if and when that step is finally taken. But there has been an independence movement in Scotland for a number of years now, and the current minority Scottish government is run by the Scottish National Party (SNP), which has been advocating Scottish independence within the EU for some time.

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While in 2014, Scotland voted 55% against 45% to remain in the UK, with many claiming that it would settle the question for a generation, the possibility of Brexit always carried the risk of re-opening the constitutional question: “a vote against EU membership might well split the UK, with Scotland becoming independent and applying for EU membership”.<sup>5</sup> In part, Scotland's vote in 2014 can be explained by the promise of stability,

including EU membership, of the side opposed to Scottish independence, a proposition which is now being put into question by the Brexit process.

### **A more European Scotland?**

In addition, many have argued that Scotland has a stronger affinity to the EU than much of the rest of the UK. The difference in EU support has been one of the factors cited as a possible driver for independence and such aspirations have been framed within the context of EU membership, with the SNP campaigning for ‘a Scotland in Europe’ in 2014. As the First Minister Nicola Sturgeon put it recently: “The basic values of the EU are ones we identify with. We like the idea of independent nation states co-operating for the common good. The commitments that heads of government made last month – defending one Europe, staying united, looking for joint solutions, promoting fairness, protecting democracy and the rule of law – they are ones which the Scottish Government endorses and wants to contribute to.”<sup>6</sup> Some of the drivers for Brexit appear to also play a smaller role in Scotland, with the First Minister, for instance, emphasising that EU citizens were still welcome in Scotland in the immediate aftermath of the Brexit vote.

The independence aspirations as advocated by the SNP have to be understood within this context. While some interpret the Scottish independence agenda as being narrowly nationalistic, the SNP defines itself as centre left and social democratic, supporting EU membership for an independent Scotland as a means for close cooperation and integration: “The SNP believe in independence for Scotland, but also in independent countries working together for good of all to protect workers, tackle climate change, preserve peace and guarantee our freedom of movement – which happens through membership of the EU.”<sup>7</sup> This is not to say that everyone in the SNP is in favour of EU membership. There are some misgivings about particular policies such as on fisheries. A minority wants to be outside any arrangement that implies a pooling of sovereignty. But, overall, the SNP, and indeed the Scottish population, are steadily supportive of EU membership.

## **STATE OF PLAY**

### **Opposing Brexit**

In line with this pro-European stance, the Scottish government has expressed its opposition to Brexit, demanding that a second referendum on Scottish independence must remain an option in the event of Scotland being taken out of the EU against its expressed will. This was rejected by Theresa May, who noted in March 2017 that, in her view, it was not the right time. In April 2019, Nicola Sturgeon renewed her call, demanding that an independence referendum should take place by May 2021 if Brexit goes ahead, arguing that “Brexit would have such a catastrophic impact on Scotland’s economy and Westminster’s approach to it had been so chaotic that Scottish voters must have the option to choose independence.”<sup>8</sup>

The Scottish government has highlighted that it also sees it as its duty to, as far as possible, honour the way the Scottish voters have expressed their opposition to Brexit. While some portray Brexit as a Trojan Horse for independence, clearly there are a range of negative impacts that will impact on Scotland despite this path not being supported. Further reasons cited by independence supporters is the impact Brexit will have on the devolution settlement, with more powers being centralised in London, ostensibly to deal with issues such as international trade negotiations. In addition, many supporters have noted the provisions for Northern Ireland to remain fully integrated with the single market despite Brexit, which are not on offer for Scotland.

### **A changing tide?**

It is not in the power of the Scottish government to decide on an independence referendum; this has to be sanctioned by Westminster. While many of the Conservative leadership contenders have either ruled out holding another Scottish independence referendum or set almost impossible conditions, it seems politically inconceivable that London denies these demands indefinitely.

Would there be a majority for independence? Many Scots are against holding another referendum at this moment and in opinion polling since the Brexit referendum, most polls have shown a comfortable majority against leaving the UK, albeit less decisively than before the independence referendum in 2014. But attitudes appear to be changing. The latest opinion poll suggests a dead heat, with 49% supporting independence and 51% against, within the statistical margin of error.<sup>9</sup>

However, this is only one opinion poll and how public opinion will evolve is hard to predict. A significant part of the electorate continues to be opposed to independence, driven in part by a sense of British identity but also by a degree of risk-aversion with regard to the economic impact of independence, for example in relation to currency, financial services and integration into the UK common market. But with the likelihood of a Eurosceptic Conservative in power in London and the prospect of a possible no-deal Brexit, the support for independence could potentially increase further. In case of a softer Brexit or a 2<sup>nd</sup> referendum leading to a revocation of Article 50, the immediate pressure for independence would be lessened, although it is likely that this aspiration will not disappear any time soon.

### **Scotland in Europe?**

At the very least, there is a significant probability that an independent Scotland could be asking to join the EU within the next few years, potentially backed by an EU membership referendum within an independent Scotland. What the EU’s response would be, given the current circumstances, is unclear. Last time, in 2014, the response from EU institutions was rather negative towards Scottish independence, partly due to domestic fears of secession, partly in an attempt to support the UK as a then-member state. But this time, the premise is different. With the UK leaving, and Scotland’s pro-European stance and continued

resistance against Brexit, as clearly demonstrated in the referendum as well as in the European elections, the case for membership would be much stronger.

This does not mean it will be easy or straightforward. While the concern that Scottish independence could potentially encourage nationalistic/populist/far-right movements could be assuaged (not least since the SNP is clearly opposed to such movements and parties, including UKIP and the Brexit Party in Scotland), fears of secessionist movements remain in a number of member states, with Scotland potentially becoming a precedent to follow.

However, it is unlikely that Scotland will serve as a strong example for others given the context of Brexit, which provides a motivation that other secessionist movements cannot appeal to. In addition, if Scotland's exit is strictly constitutional, sanctioned by the UK government, the ability of others to replicate such a process is limited, although it will not stop secessionists in other countries from using it as a political precedent in their communication. In this context, it seems unlikely that the Spanish government, the EU country most concerned about secessionist movements would block an independent Scotland from EU membership solely on the grounds of its own secessionist concerns as long as independence has been gained in accordance with UK constitutional provisions.

But is Brexit simply an excuse to drive forward the independence agenda, as many opponents claim? At this time of significant upheaval across the EU, there is more scrutiny of and sensitivity to the true intentions of the Scottish government. Scotland will have to make a strong and credible case for EU membership, showing not only that this would be mutually beneficial but also that an independent Scotland would uphold and defend the principles of European integration, not least in accepting the terms and conditions of membership in full. This is not only necessary to convince the EU but also to make the case domestically.

## PROSPECTS

### No more awkward partners

There are practical considerations that will make obtaining EU membership more complicated. The EU will want to avoid complicating the Brexit process further, which implies that EU membership for an independent Scotland can only be considered once both divorces are finalised. On the other hand, for the EU, gaining a pro-European, constructive and committed member state out of the negative Brexit experience could well be seen as major upside. That is, if Scotland can demonstrate its intention to be a reliable pro-European partner; the last thing the EU would want is to replace one awkward partner with another.

### Over to Scotland

How smooth the accession process will be will depend to a large extent on Scotland itself. While Scotland will be

further along in meeting the accession criteria than most applicants, politically, it will be necessary to demonstrate that the Scottish identity is inclusive and pro-European, rather than divisive and closed. The positive treatment of EU nationals by the Scottish government is a good starting point. A high degree of engagement with the EU, working pro-actively on common European objectives, backed by positive communication both within the EU and domestically, will also help.

Scotland must also show that it could provide stability. Economic or social chaos post-separation from the UK would need to be avoided, for example in relation to fiscal/debt policy, which could be challenging in a post-Brexit environment. This need for stability also extends to the political environment. The EU would want to ensure that Scotland could credibly commit to the obligations of membership, so commitments in law, including potentially a written constitution, might be necessary.

To alleviate the concerns of those countries with domestic secessionist movements, the separation of Scotland from the UK must be strictly constitutional, and fully accepted by the UK government. This would also ensure that the principle of reciprocal non-interference in each other's constitutional affairs could be maintained. The expectation would be that Scotland would need to go through the normal route for EU accession – Article 49 TEU. Any suggestion that Scotland could somehow take the UK's place would be resisted strongly.

### Strictly no cherry-picking

Preventing Scotland from being the successor to the UK would ensure that current special provisions for the UK would not automatically apply to Scotland. In case of Scottish accession, there would be no special treatment. Membership would come with all the obligations of a 'regular' EU country. That would entail committing to joining the euro once the conditions are fulfilled (although in practice this might take a long time), creating the necessary independent institutions, contributing to the EU budget as a net payer, adhering to the Common Fisheries Policy, and accepting free movement: in effect, accepting the *acquis communautaire* fully across the vast majority of policy areas.

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While there might be limited exceptions, most likely in the form of (temporary) derogations, these will have to be well argued and follow a clear logic. For example, on Schengen, one could argue for including an independent Scotland in the Common Travel Area with Ireland and the

UK, replicating an arrangement that already exists for an EU member state.

The accession process is likely to take a few years. In the meantime, it might be best for an independent Scotland to enter the European Economic Area (EEA) as a ‘parking position’ before entering the EU. That would ensure that, economically, Scotland would still be integrated, although it would (temporarily) miss the political power that comes with full membership. However, it would have to be clear that the EEA is not the ultimate goal. From an EU perspective, only full and unconditional membership in the EU would demonstrate a real and sustainable commitment to European integration.

### A win-win

Under those circumstances, membership of an independent Scotland would also provide the rest of the EU with a range of benefits, especially if it acts as a loyal member and even champion of the EU project. This could build on the positive engagement Scotland has demonstrated already: for over 25 years, Scotland has invested heavily in EU engagement, and during that time, has had a strong visibility and proactive role in Brussels. This can be seen in both the *presence* of Scotland and *how* Scotland works at the EU level. This (at least) matches the contributions of other small EU countries in many areas.

Scotland could also potentially act as a bridge between the EU27 and the UK, and ease the integration of Northern Ireland. As a member state, Scotland would bring a range of assets into the EU, including in the area of resources and energy, in the battle against climate change, a highly developed research/education/HE sector, with a positive acceptance of Freedom of Movement in this field and beyond, and a positive global role and image. Being a net payer into the budget will also help.

Scottish accession could add to a more positive narrative about the Union if an independent Scotland can prove its strong commitment to European integration. Having a positive, enthusiastic European partner that shows such determination to remain an EU member would reflect positively on the EU. It would also show other secessionists that being outside the EU was not even considered as a feasible path, shoring up stability and highlighting the benefits of EU membership. It would also make it clear that leaving the European Union can come at a high cost, even including the territorial integrity of one’s own country.

### Open arms?

All of this does not guarantee that the EU27 would welcome the application of an independent Scotland with open arms. Any hint of non-constitutional

processes or demands for special treatment would stand in the way of Scottish accession. Much would depend on Scotland itself. But if the conditions are met, the EU should engage positively with Scotland and treat it like any other accession country, acknowledging not only that Scotland is much further along in meeting the conditions of membership but also that the trigger for Scotland’s exit from the UK would be Brexit, which Scotland has strongly rejected.

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In the end, if Scotland delivers, then rejecting a country that wants to be in the EU, accepts all conditions, is willing to go through the appropriate processes and follows European principles is not only short-sighted but should be inconceivable: rejecting such a country would undermine the basis of the EU, creating serious damage to the fabric of the integration project. It would be ironic if the EU manages to hold fast to its principles when negotiating with the UK but jettisons them in the negotiations with an independent Scotland. The long-term damage of the latter might well end up outweighing the impact of Brexit itself.

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<sup>1</sup> Emmanouilidis, J.A., and Fabian Zuleeg (2016), “[Brexit: a new beginning for the EU or the beginning of the end?](#)”, Brussels: European Policy Centre.

<sup>2</sup> [Speech](#) by Nicola Sturgeon at the European Policy Centre, 11 June 2019.

<sup>3</sup> “[EU referendum results](#)”, BBC, 24 June 2016.

<sup>4</sup> “[If there was another referendum on Britain’s membership of the EU, how would you vote? Data Scotland](#)”, 17 May 2019, What UK thinks.

<sup>5</sup> Fabian Zuleeg (2015), “[UK in-out referendum firmly on the agenda](#)”, Brussels: European Policy Centre.

<sup>6</sup> [Speech](#) by Nicola Sturgeon at the European Policy Centre, 11 June 2019.

<sup>7</sup> “[How can the SNP support membership of the EU alongside independence?](#)”, SNP policies.

<sup>8</sup> “[Sturgeon outlines new Scottish independence](#)”, 24 April 2019, *The Guardian*.

<sup>9</sup> [The Times Survey results](#), 24-26 April 2019, YouGov.