



launching Friends of Europe's
GREAT BREXIT DEBATE

SCOTLAND AND BREXIT

Shockwaves will spread across EU

In-depth Discussion Paper

by Kirsty Hughes,
Associate Fellow at Friends of Europe

January 2016



Friends of Europe is a leading think-tank that aims to stimulate thinking on key global and European political challenges.

We are a key player in 6 policy areas:

**Future Europe | Smarter Europe | Greener Europe
Quality Europe | Global Europe | Security Europe**



Some of the familiar faces and household names who have used **Friends of Europe's** high-profile yet neutral platform to put across their ideas to decision makers and to public opinion

For more information on Friends of Europe's work and to download our publications, please visit

www.friendsofeurope.org



Friends of Europe, a part of Europe's World Group, is a leading think-tank that aims to stimulate new thinking on global and European issues.

Friends of Europe does not express opinions of its own, the opinions expressed in this publication are the responsibility of the author.

Reproduction in whole or in part is permitted, providing that full credit is given to Friends of Europe and that any such reproduction, whether in whole or in part, is not sold unless incorporated in other works.



Table of contents

Summary	5
Scotland and Brexit: a path to independence or crisis?	6
1. Scotland and the UK's EU Referendum – polls highlight tensions	6
1.1 UK-wide Polls	6
1.2 Sceptical England, pro-European Scotland and Northern Ireland, unsure Wales: who will dominate?	6
1.3 Three scenarios	7
2. Scotland and the EU	7
2.1 What sort of campaign in Scotland?	7
2.2 Scotland and the EU – What sort of policies?	10
3. Scotland, Brexit and Independence	11
3.1 Political Crisis and Challenges for the UK and EU	12
3.2 Scotland in the face of Brexit	13
4. Managing Independence after Brexit – three parallel sets of talks?	18
Conclusion – Options for Scotland in the Face of Brexit	20
About the author	21

Summary

This paper asks what would happen in Scotland if the UK as a whole votes for Brexit while Scotland votes strongly to stay in the EU. Scotland will find itself on the horns of a dilemma – there will be major political and economic costs to leaving the EU, but also significant costs if the rest of the UK is outside the EU while an independent Scotland remains inside, with the EU's external border then running between England and Scotland.

In the broad political crisis that will ensue, one possibility is that Scotland would push forward to independence. Support for the EU is high across both pro- and anti-independence voters. Yet whether Brexit will persuade voters who previously opposed independence to shift their views is a key and, for now, open question. Might the prospect of a border between England and Scotland, with Scotland and the rest of the UK being in different trading regimes, worry voters rather than shift them towards independence?

If Scottish opinion does shift towards independence after a Brexit vote, some will argue for a rapid, second independence referendum but others will caution against too much haste. If a second independence referendum is lost, there will not be another for decades. Yet, if Scotland delays, it too will find itself outside the EU, perhaps with little voice in the UK's exit talks with Brussels. If it then held a new independence referendum some years later, it would have to re-apply for EU membership.

Various political crises are likely to ensue in the face of a Brexit vote. If the SNP did decide to call a second independence referendum, Westminster may not agree to it, leading to a bitter political stand-off. Furthermore, while EU matters are not devolved, EU law is part of Scotland's devolution statutes (in the Scotland Act), and the Scottish parliament does pass various EU decisions into law. If the Scottish parliament refused to repeal or revise EU laws as part of Brexit – refusing to pass a legislative consent motion – there would be a major political crisis between Scotland and the rest of the UK. The Scottish government might also challenge the loss of acquired rights by its citizens and businesses that Brexit could entail.

Scotland's government will surely make considerable political capital out of the crisis, calling on the EU to help it remain in Europe (and possibly Wales and Northern Ireland joining in this call).

In the face of a Brexit vote, Scotland will need to have a major national debate about its relationship to the EU and the different choices it faces. Scotland will have to decide its next steps quickly and carefully, if it is not to find itself outside of the EU, with little say in the UK's future relationship with the EU.

If the Scottish government did go ahead with a second independence referendum and it was successful, then the UK's union would dissolve at the same time as Brexit. Three parallel sets of talks would need to happen – the rest of the UK (rUK) with Scotland on separation, rUK with the EU on Brexit, and Scotland with the EU on becoming an independent member state.

In the end, Scotland will face four main choices in the face of Brexit:

1. Leave the EU with the rest of the UK;
2. Move rapidly to a second independence referendum with the aim of staying seamlessly in the EU;
3. Challenge, block and stall the Brexit process, creating a deep political and constitutional crisis
4. Leave the EU with the rest of the UK, and argue for Scotland to have the power to negotiate a closer, differentiated relationship with the EU than the rest of the UK may choose.



Scotland and Brexit – a path to independence or crisis?¹

As David Cameron's negotiations with his fellow EU leaders enter the final straight, aiming for a deal in February, the UK's EU referendum could be held as early as June 2016. Current polls suggest the vote may be very close. They also show that Scotland will probably vote in favour of the EU, while England may well not.

Scotland could, under certain circumstances, keep a reluctant England in the European Union. Yet a strong English eurosceptic vote could result in Brexit – the UK leaving the EU, with Scotland being pulled out too against its will.

Many have predicted that Brexit will lead to Scottish independence, with Scotland refusing to accept a forced EU departure. Yet, in the pervasive political crisis that is likely to ensue after a vote for Brexit, the challenges and decisions facing Scotland will be complex and tricky to handle.

This paper looks at Scotland's policies and attitudes towards the EU, and the political challenges and debates that will occur if the UK does vote for Brexit. These challenges will not be Scotland's alone – they will be part of a pan-UK discussion about the aftermath of the vote, and part of an EU debate too, where Ireland, in particular, will be at the forefront of concerns and debates as to how to handle Brexit. One thing is clear, the EU and the UK and Scottish governments – and opposition parties – need to do some careful contingency planning now for how they would handle the immediate aftermath of Brexit.

Scotland and the UK's EU – polls highlight tensions

UK-wide polls on whether the public will vote to remain in or leave the EU in the upcoming referendum have shown a lot of variation in recent months, but in Scotland polls have consistently shown Scottish voters would support staying in the EU by a considerable majority.

Unless all four parts of the UK vote in favour of staying in the EU, the result is likely to be highly

politically divisive, whether the result is Brexit with England dragging Scotland, Wales and Northern Ireland out of the EU against their will, or the opposite result, whereby those three keep the UK in the EU, but against England's will. Serious political and constitutional crises would be likely to result.

1.1 UK-wide Polls

'Poll of Polls'² averages through autumn 2015 suggested that the overall UK vote was getting very close, with the 'remain' side just ahead of the 'leave' side (as close as 51% to 49%), and occasional polls showing Brexit as possible. However, the December 'poll of polls' showed the 'remain' side moving ahead – with 56% voting to stay against 44% to leave. How public views will change once David Cameron completes his negotiations with the other EU leaders, and how the referendum campaign itself will impact on voters is, for now, a wide open question.

Opinion polls may also not fully capture how views are changing. The failure of opinion polling to predict the UK general election accurately last May has led to more scepticism about polls – and indeed the recent EU opinion polls show³ much stronger 'remain' support in polls conducted by 'phone rather than online, for reasons that are unclear. So while the current overall picture is of a lead for 'remain', the accuracy and volatility of this support is open to question, and to influence by campaigning.

Polling also suggests that many voters will be strongly influenced by whatever deal David Cameron brings back from Brussels. One early December poll⁴ gave 35% definitely voting 'remain', 33% definitely voting 'leave' and 31% ready to change their vote according to the outcome of Cameron's negotiations. So while many see Cameron's reform goals as rather minor, how the general public assess the 'new deal' will potentially have an important impact.

1.2 Sceptical England, pro-European Scotland and Northern Ireland, unsure Wales: who will dominate?

Scotland is clearly much more pro-EU than England and Wales; and while there are fewer polls for Northern Ireland, it looks possible that

¹ I am grateful to a number of people in Scotland (including politicians, officials, journalists, commentators, policy experts and academics) who have taken the time to discuss Scottish and UK politics, independence, EU policies, and the UK's EU referendum with me. All views expressed, and any errors, are my responsibility alone.

² "EU referendum poll of polls" 'What UK thinks EU' website December 2015

³ "What A Contrast! Phone Polls Put Remain Well Ahead" John Curtice, December 2015, 'What UK thinks EU' website

⁴ Poll by Survation, December 2015, as discussed on 'What UK thinks EU' website

Northern Ireland could vote even more strongly in favour than Scotland.

In a recent analysis, NatCen⁵ put pro-EU support at 52% for England, 55% for Wales and 64% for Scotland, with Northern Ireland polls suggesting support even as high as 75%. Meanwhile, a Panelbase poll for the Sunday Times⁶ last summer put England on 51% for leaving the EU, with 66% in Scotland wanting to stay. These figures suggest a major political divide between Scotland and England with potentially explosive results depending how the EU referendum goes.

It is not, though, automatic, that an English 'leave' vote determines the outcome. It is quite possible that the UK as a whole could vote to stay⁷ in the EU, even if its largest constituent part, England, voted to leave. This will depend on turnout as well as on how big a difference there is in the views of different parts of the UK – polls so far suggest 'leave' voters are more likely to turn out but how strong this effect will be is unclear.

If Scotland did indeed vote at around 66% in favour (with a turnout level similar to last year's general election) and Wales and Northern Ireland vote 'remain' too, this would outweigh an English 'leave' vote at 51%. The 'remain' in the EU camp would have a majority at that point of over half a million votes – giving a close overall UK vote of 51% for 'remain' and 49% for 'leave'. In fact, such a vote would also counteract an English 'leave' vote at the level of 52% support for Brexit – though with the majority narrowing to around 100,000 votes – an overall UK vote of around 50.16% for 'remain' and 49.83% for 'leave'.

However, if English views are strongly swayed by the 'leave' campaign, then a 53% or higher vote to leave in England will dominate any likely 'remain' vote in the rest of the UK, given the much larger size of the English electorate – again with an extremely close UK-wide result (at that point at about 50.66% for 'leave' and 49.33% for 'remain').

If Scotland votes 'remain' much more weakly – for example at 52% for 'remain', then England can pull the UK out of the EU with just a 51% English vote for 'leave'. That would give the narrowest of

margins for 'leave' at 50.33% for 'leave' and 49.66% for 'remain'. Such potentially narrow margins, if that is how the vote goes would fuel debate across the UK about Brexit, with opinion narrowly split across the UK.

1.3 Three Scenarios

There are three key scenarios for the outcome of the UK's EU referendum:

Firstly, if all four parts of the UK vote in favour of staying in the EU, the immediate political fall-out of the vote may be relatively slight – although the overall impact⁸, in terms of reinforcing the UK's opted-out, low influence model of EU membership will be important.

The second possible scenario is of a vote for Brexit, with England's choice dominating that of Scotland, Northern Ireland and possibly Wales too. This would result in a major political and constitutional crisis.

The third scenario – a vote for the UK to stay in the EU driven by Scotland, Wales and Northern Ireland against the wishes of England – would also lead to considerable political debate in England, probably reinforcing euroscepticism in that country, increasing support for UKIP, and posing major challenges to the unity of the Conservative Party, and to the future policies of the Labour Party.

2. Scotland and the EU

2.1 What sort of campaign in Scotland?

The Scottish National Party (SNP) has made it clear that it will not be part of any UK-wide campaigns in favour of the EU⁹, and that it will run its own campaigning in Scotland, working with civil society groups. The SNP opposed David Cameron's call for a referendum. While it has been cautious in its comments so far on his specific negotiating aims and issues, the SNP has been highly critical of the damage they consider Cameron is doing to the UK's relations with its partners through the negotiation and referendum process¹⁰.

The driving factor behind the SNP's determined opposition to campaigning jointly in favour of the EU with other parties is the experience of the

⁵ "Disunited kingdom: How far apart are we on the EU?" Rachael Ormston December 2015, 'What UK thinks EU' website

⁶ "Brexit 'will push Scots to leave UK'" Jason Allardyce, Sunday Times 19 July 2015

⁷ "Scotland might keep the UK in Europe" Kirsty Hughes, October 2015, Open Democracy website

⁸ "3 Scenarios for the outcome of the UK's EU referendum" Kirsty Hughes, December 2015, Open Democracy website

⁹ Nicola Sturgeon, Speech to the European Policy Centre, 2nd June 2015, Brussels



2014 independence referendum in Scotland. While the joint 'Better Together' campaign of the Conservatives, Labour and Liberal-Democrats won the referendum, it contributed decisively to Labour's epochal wiping from the electoral map in the May 2015 general election. The political benefits of the referendum went to the SNP, and to a lesser extent to the Scottish Greens, with membership of both parties increasing substantially after the referendum¹¹.

The next elections to the Scottish Parliament take place in May 2016 with current polls showing the SNP on track for a landslide, and Labour looking like it might lose all its constituency seats, only getting any seats through the list system¹² (the list system complements the constituency seats – Scotland unlike the UK having a mixed system of 'first-past-the-post' for constituency seats, and proportional representation for those standing on the party lists). Recent polls put the SNP on 58% for the constituency vote, and Labour on only 21%. Behind Labour come the Conservatives, then the Scottish Greens, and the Lib-Dems. The dire performance of Labour in Scotland has led former Labour First Minister in Scotland, Henry McLeish to call for Scottish Labour to formally split from the UK party if it is to survive¹³.

If the UK's EU referendum is indeed held in June, then the EU will become a much stronger issue during the Scottish election campaign than it would otherwise be, where for now domestic issues look set to dominate. If polls start to suggest the UK might vote for Brexit, it will become an explosive issue in the election, and in the subsequent referendum campaign. This is despite the fact that Scottish Labour leader, Kezia Dugdale, and Scottish Conservative leader, Ruth Davidson have both expressed their support for the EU¹⁴. There would be pressure on the SNP to commit more strongly to a new independence referendum. Meanwhile Labour would come under strong pressure to say how it would react, and if it would still oppose Scottish independence in the face of Brexit – whether Labour (UK Labour or Scottish Labour) will have a clear position on that for now

looks unlikely (not helped by UK leader Jeremy Corbyn's lukewarm support for the EU).

A cacophony of voices

In the UK, there are a myriad of groups already active campaigning for or against the EU ahead of the formal referendum campaign¹⁵. These include two groups – Leave.EU and Vote Leave – competing to be recognised as the official voice of the leave campaign, the 'Britain stronger in Europe' group, likely to be the official voice of the remain campaign, the 'Labour in for Britain' group which will campaign separately to the cross-party campaign, and many others. So, rather than two clearly distinguished campaigns, the EU referendum looks likely to be dominated by a diverse, and motley, collection of groups and voices all vying for the public ear.

This cacophony of voices and groups will be even more intense in Scotland. While UK-wide groups will campaign in Scotland too, they are likely to be wary of how to go about that campaigning given widespread antipathy to Westminster or England telling Scotland what to do or how to vote. There will be several pro-EU groups in Scotland including the SNP's campaign, and quite likely business and trade union groups, Scottish Labour, Scottish Greens and more. Given the preponderance of pro-EU views across political parties, business, unions, and academics, a separate 'leave' campaign may struggle in Scotland but discussions of how to set up such group¹⁶ are under way, and BBC Scotland, as in the rest of the UK, will be under a strict obligation to provide balanced coverage of the two sides.

Scottish views on the EU

Some argue¹⁷ that the difference in attitudes to the EU in Scotland compared to England mainly reflect differences in political party support – so a Labour voter is equally like to be pro-EU in England as in Scotland, likewise a Lib-Dem voter, whereas the lack of support for the Conservatives and UKIP in Scotland, compared to England, also drive the overall differences between the two countries.

11 For an overview of the referendum campaign and impact, see Iain MacWhirter (2014) "Disunited Kingdom: how Westminster won a referendum but lost Scotland", Cargo publishing.

12 "Poll: SNP increases lead despite opposition attacks at Holyrood" Daniel Sanderson HeraldScotland 21st December 2015

13 "Scottish Labour must split from UK party, says Henry McLeish" Magnus Gardham, HeraldScotland 28th December 2015

14 "Pro-EU campaign must be positive says Scottish Tory leader", Libby Brooks, Guardian 22nd September 2015; "Kezia Dugdale: Labour should make a distinct case for staying in the EU", LabourList website, 7th June 2015

15 The Electoral Commission will designate one official 'remain' and one 'leave' campaign and those groups will benefit from higher spending limits, public grants and mailings (BBC website 9th October 2015 "EU referendum: Who's who guide to the UK exit campaigns").

16 "EU exit campaign to use SNP case for independence" David Maddox, The Scotsman 17th October 2015

17 See, for example, John Curtice "Could pro-EU SNP voters actually keep Scotland within the Union?" The HeraldScotland, 26th October 2015, and Rachel Ormston "Disunited kingdom: How far apart are we on the EU?" [blog](#), What UK Thinks EU website, 2nd December 2015

However, the SNP only exists in Scotland and since it currently is in government and is dominating the polls, its views – and those of its supporters – on the EU, are particularly important and distinct from the rest of the UK. SNP voters, though fairly strongly pro-EU, are not as in favour as Scottish Labour and Lib-Dem supporters. One recent poll¹⁸ put SNP voters at 50% in favour of the EU with 33% against, compared to over 56% support from Labour and 63% from LibDem supporters. This in part reflects the SNP's history with some more traditional nationalists not wanting to be part of any other international union (and indeed in the 1975 EU referendum in the UK, it was Scotland which was more sceptical than England). There is also a left-wing current in Scottish politics which is critical of the EU, especially in recent years given the austerity policies in the eurozone, especially the austerity imposed on Greece.

Interestingly, views about Scottish independence do not appear to have a strong influence on attitudes towards the EU – both pro- and anti-independence supporters show similar levels of support for the EU, one recent poll¹⁹ putting pro-independence voters at 61% in favour of the EU, and anti-independence at 66%. This leaves open the critical question of whether opponents of independence would change their minds in the face of Brexit – and so open up a path to a second independence referendum.

Despite their stronger support for the EU, Scottish voters are also concerned about immigration even if not to the same degree as English voters – which is likely to be one of the most important issues in the referendum campaign²⁰. This is despite the fact that the Scottish government has taken a much more pro-migration stance than the UK government, including arguing for the UK to take its fair share of refugees.

One important difference between English and Scottish views appears to be how intrusive they consider the EU – or 'Brussels' – to be. A new study²¹ suggests that, in England, 26% consider the EU has 'most influence' in how the country is

run while in Scotland only 4% express that view. The same study suggests that the more people in England feel English rather than British, the more anti-EU they are, while the same does not hold in Scotland.

However, the EU is mostly not a major focus of concern or debate in Scotland. The question of whether Scotland could become an independent member state in the EU or would have to leave and wait several years to re-join (as the scaremongering²² had it) was a very live issue throughout the 2014 referendum campaign. Yet the focus of most debates since the referendum (with a few key exceptions including the siting of the UK's nuclear deterrent Trident in Scotland) has been on domestic policies (from health and education to employment, infrastructure and land reform) and on the devolution of further powers to Scotland.

This lack of attention to the EU does not however mean that, faced with Brexit, the issue would not become of major importance. It does mean that for now, in current political debates, EU issues are not (or not yet) highly salient.

It is interesting to note, in this context, that compared to Ireland, there has so far been much less debate and concern in Scotland about a possible UK exit from the EU. In Ireland, its parliament's joint committee on EU affairs has called the UK's relationship with the EU "a vital national interest to Ireland"²³, while Ireland's Economic and Social Research Institute has produced an in-depth study estimating the economic impacts of Brexit for Ireland (including an estimated 20% fall in trade between the two countries, major issues over migration and the Ireland/Northern Ireland border, and concerns over energy links²⁴). The Scottish Parliament's European and External Affairs Committee is currently holding an inquiry into the impact of the EU referendum on Scotland but it has yet to report.

18 "Independence referendum anniversary poll" Survation 11th September 2015 for Scottish Daily Mail 19 "Independence referendum anniversary poll" Survation 11th September 2015 for Scottish Daily Mail

20 "Britain, the European Union and the Referendum: What drives Euroscepticism?" (2015) Matthew Goodwin and Caitlin Milazzo, Chatham House Briefing

21 "The Conservative Party and the New English Nationalism" (2015) Charlie Jeffery, Ailsa Henderson, Roger Scully and Richard Wyn Jones, mimeo

22 See "Accession of an Independent Scotland to the European Union: a view of the legal issues" Stephen Tierney, December 2013, [Briefing Paper](#), ESRC Scottish Centre on Constitutional Change; "Scotland and the EU after independence" Michael Keating, November 2013, [Briefing](#), Scottish Centre on Constitutional Change; and "EU myths, politics and scaremongering on an independent Scotland" September 2014, Kirsty Hughes, [Open Democracy](#) website.

23 "UK/EU Future Relationship: Implication for Ireland" June 2015 Joint Committee on European Union Affairs, Houses of the Oireachtas

24 "Scoping the Possible Economic Implications of Brexit on Ireland", Alan Barret et al, research series no 48, Economic and Social Research Institute, November 2015



2.2 Scotland and the EU: What sort of policies?

The Scottish government, led by First Minister Nicola Sturgeon, has been consistently in favour of the UK's EU membership. Sturgeon and the SNP opposed David Cameron's aim of holding a referendum on the EU, saying there was no popular demand for it. Once it was clear the referendum would go ahead, the SNP demanded a 'double-lock' on it, whereby all four parts of the UK should be in agreement before any decision was made to leave the EU²⁵. In the absence of any written (or federal) constitution that might underpin such a double-lock, there was little surprise when the UK government rejected such a proposal.

Little influence on the UK's EU policy positions

Since the UK's foreign and EU policies are not devolved to Scotland, even though the Scottish Parliament has responsibility for implementing large areas of EU legislation, Scotland's EU policies are not as developed as they would be if Scotland had a greater constitutional role in the UK's EU policies. Scotland – and the other devolved administrations of Wales and Northern Ireland – are, in theory, consulted by the UK government on aspects of EU policies that may affect devolved areas of policy, but there is no formal route to influence beyond that. Scottish ministers do occasionally represent the UK at the EU's Council of Ministers – but since this occurs just a few times a year it is probably rightly seen as tokenism.

While the Scottish government requested²⁶ more powers for Scotland vis-a-vis the EU in its submission to the Smith Commission²⁷ (which reported on devolving more powers to Scotland after the independence referendum) there was no agreement on this. Consequently, relations continue to be managed under a Concordat²⁸ setting out consultations, in particular through a Joint Ministerial Committee.

The Smith Report did recognise this was less than adequate, calling for the 'implementation' of the existing Concordat to be improved, including "ensuring Scottish Ministers are consulted". The fact this had to be said highlights perhaps only

too clearly that consultation has been anything but adequate until now. The Scottish Parliament's inquiry into the EU referendum is also considering this issue, with some arguing for greater formal roles for the devolved administrations²⁹. The fact that the UK's Europe Minister – David Lidington – has until now refused the request of the Scottish Parliament's European Committee to give evidence to their EU inquiry perhaps also speaks volumes about the UK government's attention to views and concerns of the devolved administrations on EU matters³⁰.

Yet, despite this lack of EU powers in Scotland, if Brexit did occur, the question of repealing EU legislation passed by the Scottish Parliament could become a major bone of contention³¹ (as discussed further in section 3).

Scottish EU policy priorities

The Scottish government, and civil service, have managed, despite limited resources and powers, to develop an active EU policy. The headlines of this Scottish EU policy emphasise two broad areas – prioritising economic and social policies that are important to the EU's citizens, and regulatory reform³². There appears to be little difference between the SNP and the Conservatives in their emphasis on competitiveness and the need for regulatory reform. However, in contrast to the Tories, the SNP consider current EU reform initiatives provide an adequate framework for change, they support the raft of social policies within the EU, and they emphasise the importance of tackling unemployment and promoting inclusion across the EU.

The Scottish government is also positive about freedom of movement across the EU, welcoming the positive contribution of EU citizens from other countries to Scotland, and is much more open to bringing in more refugees to the UK and Scotland. This means the SNP may be unlikely to support whatever deal Cameron brings home on curbing EU migrants' benefits or other rights, if he succeeds in doing so.

²⁵ Nicola Sturgeon, speech to the European Policy Centre, 2nd June 2015

²⁶ Scottish Government Proposals "More Powers for the Scottish Parliament" Edinburgh 2014

²⁷ "The Smith Commission" November 2014, Report of the Smith Commission for further devolution of powers to the Scottish Parliament

²⁸ "Memorandum of Understanding and Supplementary Agreements" March 2010

²⁹ Professor Drew Scott, written evidence to the Scottish Parliament's European and External Affairs Committee's current "Inquiry into EU reform and the EU referendum: implications for Scotland"

³⁰ See two responses to the committee by the UK Europe minister on the Inquiry's [website](#) under correspondence.

³¹ See "Briefing on EU reform and the EU referendum by Sionaidh Douglas-Scott, professor of European law and human rights at Oxford University; implications for Scotland" 2015, Scottish Parliament European and External Relations Committee; "Changes to the UK's EU Membership Might Require the Consent of the Scottish Parliament" 2015, Cormac Mac Amhlaigh, [European Futures](#) website, University of Edinburgh.

³² see, for example, "Scotland's Action Plan for EU Engagement"; "The Benefits of Scotland's EU Membership"; "Scotland's Agenda for EU Reform" all published by the Scottish Government

More broadly, the SNP sees the EU as being positive for Scottish business, jobs, environment, and other areas, and emphasises Scotland's distinctive interests in a range of areas from fisheries and agriculture to renewable energy and climate change³³.

However, in the EU referendum campaign, the SNP has said it will make a strongly positive case for the EU – differences on Cameron's reform package will not be centre-stage since that is not what the referendum question is on.

Moreover, despite these differences, there is much that is similar to the UK's overall policy stances. The SNP – with some caveats over the Transatlantic Trade and Investment Partnership – supports free trade, and prioritises competitiveness and completing the Single Market in services. During the independence referendum, it said it would keep the UK's opt-outs on the single currency, Schengen, and Justice and Home Affairs as and when it became an independent member state (a stance which would be controversial in the EU if Scotland did enter talks to be a separate member state)³⁴.

While the SNP has spoken out against austerity in the UK and in the EU, its concerns about unemployment in the EU, and over-tight fiscal rules, have been cautiously presented. Recent speeches by First Minister Nicola Sturgeon, and by Fiona Hyslop, the cabinet secretary for Culture, Europe and External Affairs in the Scottish government, have focused much more on making the case for Scotland as a sensible, modern EU member state (to be), than on the current major crises and challenges facing the EU³⁵.

The Scottish Parliament also plays a role in EU debates and policies in addition to its legislative role. It has a European and External Affairs Committee which undertakes regular inquiries – including its current one into “EU reform and the EU referendum: implications for Scotland” – expected to report by March 2016. The Parliament's information centre also produces research and briefings on the EU³⁶. Scotland has six MEPs (two SNP, two Labour, one Conservative

and one UKIP) and participates in a range of EU bodies, including the Committee of the Regions.

Yet, despite these resources, and while Scotland has a number of academics who are expert across a wide range of EU political, economic and policy issues, it lacks a wider policy community including diplomats, think tanks and media with the resources to promote and contribute to a wider EU debate to the extent that this exists for instance in London (or indeed in Dublin). Furthermore, while there are expert civil servants in the Scottish Government's offices who focus on the EU, these groups are relatively small. Nor does the SNP itself invest much in EU or international policy advice or resources, in part due to its lack of powers in these areas, and perhaps also due to the strongly domestic focus of much of the Scottish political debate³⁷.

Overall, while the Scottish government has a raft of policy headlines and priorities on the EU, it is inevitable that these policies are not as broad or developed as they would be for an independent EU member state. It is notable in particular that the Scottish government's European public policy publications make little reference to the EU's neighbourhood policies and challenges (not least Ukraine and Russia, as well as the turmoil in the Middle East) nor to its wider common foreign and security policy.

Consequently, while the Scottish Government – and other pro-EU parties and groups – will be well placed to make the case for staying in the EU in the upcoming referendum, whether they have sufficient policy resources at their disposal to handle effectively the political, economic and legal challenges of Brexit, if that were the referendum's outcome, is a different question.

3. Scotland, Brexit and Independence

If the UK votes to leave the EU (an outcome that could occur as early as the end of June), a broad political crisis would result. The reaction in Scotland and the impact on its politics of independence – assuming as seems probable its population had voted strongly to stay in the EU – will be one key dimension of this crisis but there

33 “The Benefits of Scotland's EU Membership” Scottish Government

34 “Scotland's Future: your guide to an independent Scotland” (2013) Scottish government

35 Nicola Sturgeon, speech to the European Policy Centre, 2nd June 2015, and Fiona Hyslop, “Scotland's future in the EU” speech to the European Movement Ireland, Dublin 9th November 2015

36 see “The Impact of EU Membership in Scotland” SPICE Briefing October 2015

37 [The Scottish Global Forum](#) is one think-tank that has contributed to international debates in Scotland including with a range of articles on a Northern and Arctic policy for Scotland, but Scotland's think-tank world remains small and principally domestically focused.



will be many others.

3.1 Political Crisis and Challenges for the UK and EU

If the UK votes for Brexit, against the advice of the leaders of all the main political parties except for UKIP, British politics will be in turmoil. The wider implications of a decision to pull out of the EU after over 40 years will reverberate domestically, in Europe, and internationally. David Cameron will surely have to resign, having lost the referendum, and a more Eurosceptic leader may then take over.

The process of leaving the EU will be a long, complex and difficult one. There will be much political debate as to what sort of future relationship the UK should have with the EU, its main trading partner, and indeed over how that should be decided (since the EU referendum will not have put forward alternatives). It seems unlikely the UK would opt for the European Economic Association (EEA) – which it anyway has no automatic right to join – as this would imply keeping policies such as free movement of labour, while losing influence and power³⁸. Quite likely, a UK specific agreement with the EU will need to be negotiated and agreed. It will absorb large amounts of political and civil service time for a number of years – in the UK and in the EU and other international bodies (as trade and other international agreements are renegotiated).

Brexit will reduce British influence in Europe and in the world. It will weaken the UK's relationship with the US and many other countries round the world. Marking a sea change in its foreign policy, the UK will have chosen to play a more isolationist, less influential and less involved role.

For the EU, it will be the first time a member state (rather than a part of a member state (the Greenland case)) has left the EU, a fracturing of the European project that will have various knock-on effects on future EU politics amongst the 27 remaining member states.

Ireland will be the EU member state facing particularly tough choices as to how to deal with the crisis. It will want to secure as best it can its future relationship with the UK. Yet it is clear that if

Northern Ireland is outside the EU, this will pose very difficult challenges for the border between it and Ireland, which will become one of the EU's external borders³⁹. There will be no means to resolve these difficulties quickly, and end uncertainty, since the UK will inevitably need time to decide what sort of relationship it wants with the EU, including on borders, free movement, trade and more – and the EU will have its own views to draw up too, making any negotiation difficult and lengthy⁴⁰.

If the UK wants, as seems likely, to end free movement of labour between it and the rest of the EU (albeit probably with a transition period), it is possible that the UK and Ireland will argue for an exception for Irish and UK citizens across their two states. Yet even if they do agree such an exception, the UK may well want passport controls on the border, since otherwise EU citizens who will still have the right of free movement into Ireland, will be able to move across into Northern Ireland (even if they will no longer have the right to work or residence in the UK).

Ireland will, doubtless, be at the forefront of EU negotiations and debates over the terms of the new UK-EU agreement to be negotiated.

A second referendum after a Brexit vote?

Some on the eurosceptic right have suggested that, after a vote for Brexit, there might be a second referendum having got a better deal from Brussels. London mayor, and likely future contender for Conservative Party leader, Boris Johnson is said to be interested in this possibility – though he has yet to show his hand as to whether he will campaign for Brexit or not⁴¹. However, the argument that a Brexit vote will push the EU into offering the UK a better deal is not a strong one – if, for instance, an opt-out from free movement of labour were seen as the key issue for a second referendum, German Chancellor Angela Merkel and others have made it repeatedly clear this is non-negotiable. This leaves open the question of whether a wafer-thin vote for Brexit might anyway lead to wider calls for a second referendum but managing this politically would be extremely difficult – and if voters felt their views were being ignored, a second vote could go more strongly for

38 "Should The UK Withdraw From The EU: Legal aspects and effects of possible options", (2015) Jean-Claude Piris, [European Issue no 355](#), Robert Schuman Foundation; "Brexit: what would happen if the UK voted to leave?" (2015) Nicholas Kent, [British Influence](#)

39 "Scoping the Possible Economic Implications of Brexit on Ireland" (2015) Alan Barret et al, research series no 48, Economic and Social Research Institute, Dublin, November 2015

40 Article 50 of the Lisbon Treaty suggests the exit process for a member state should take two years unless the European Council decides unanimously to extend that period; many commentators consider it would take a considerably longer period of time.

41 "Boris Johnson and the EU referendum: London mayor must pick a side" Nicholas Watt, Guardian newspaper, October 9th 2015

Brexit.

3.2 Scotland in the face of Brexit

Assuming Scotland, along quite likely with Northern Ireland and Wales, votes strongly to remain in the EU, then the prospect of Brexit will create a political outcry. In a speech in Brussels last June, Nicola Sturgeon suggested that if the UK voted for Brexit: “the groundswell of anger among ordinary people in Scotland could produce a clamour for another independence referendum which may well be unstoppable”⁴².

If three of the UK’s four constituent parts had voted to stay in the EU while England had determined the outcome – to leave the EU – there would surely be a deep political and constitutional crisis. This would include a boost to the Scottish independence case but would go beyond this. Given the SNP asked for, but didn’t get, a ‘double-lock’ on the referendum result to cover the possibility of an unwelcome Brexit, this would be likely to come back into the debate as a constitutional argument – but this time about all three devolved administrations including Northern Ireland and Wales too. The UK will be politically fractured across all its parts, and potentially debates about Irish unity will return as well.

If the overall result of the referendum was close, there may be demands in Scotland, Wales and Northern Ireland for a new referendum – demands that may be heard in England too where many of the public, business, unions and politicians will be deeply worried or appalled at the result. Depending on how opinion polls shift, there may also be demands for an early general election. It will be a time of great uncertainty.

A boost to the journey to independence?

Many commentators have assumed that if the UK votes for Brexit, Scotland will move rapidly towards independence – the threat of being dragged out of the EU against its will acting as the final nail in the coffin of the arguments for staying in the UK. Yet the big irony here, if Brexit does boost the independence case, is that independence for Scotland would be much easier to manage if both it and the rest of the UK (rUK) remained in the EU.

If Brexit happens, then Scotland would have to

choose between staying outside of the EU as part of the UK (or as an independent state), or being in the EU as an independent member state with the EU’s external border running between it and England, and with its main trading partner, the rest of the UK, not operating under the same rules, regulations and institutions as Scotland. There are costs in either scenario – costs of being outside the EU, and costs of not being in the same trading regime (and other common policies) with the rest of the UK. It is a dilemma that many EU experts in Scotland simply hope will not come to pass, with the UK staying inside the EU.

After a Brexit vote, the SNP could decide to press forward for a rapid second independence referendum or to hold fire for a few years to be more sure of winning. Yet, in the end, the Brexit challenge remains the same for supporters of independence: how to manage an independent Scotland being in the EU as an independent member state while the rest of the UK is outside.

Issues to consider

Amongst the issues for the pro-independence camp to consider in the initial political turmoil will be the following:

Shifting Public Opinion – will the ‘nos’ change their views in the face of Brexit?

It is an open question whether and how much public opinion will shift on Scottish independence in the face of Brexit. Opinion polls suggest both ‘yes’ and ‘no’ voters are equally in favour of EU membership. The central question though is whether those not currently in favour of independence will change their views, to what extent, and how reliably.

There are many different views across pro-independence supporters as to whether Brexit should trigger a new independence referendum. While Nicola Sturgeon has said it could very likely be such a trigger, she will be cautious about holding another independence referendum without a strong and sustained shift in the polls⁴³.

Recent polls on support for independence show some increase in support for independence since the referendum in September 2014 (when 45% voted yes to 55% no). A recent Survation⁴⁴ poll found a close split across Scotland’s population – 49.3% would now vote yes to 50.7% no

⁴² Nicola Sturgeon speech to the European Policy Centre, Brussels 2nd June 2015

⁴³ See “SNP want polls to show 60% support for independence for a whole year before calling referendum” HeraldScotland 18th October 2015



(excluding don't knows). There is not strong support for a new referendum in the very near future – Survation found 20% supporting a new poll within two years, an additional 23% supporting a poll within 5 years. Some in the pro-independence camp emphasise that much more work needs to be done on the arguments and policies for independence before going back to the voters.

There is, as yet, little current opinion poll data on the crucial question of how much opinion may, or not, shift to independence in the face of a UK vote for Brexit. As and when such polls appear they will be closely scrutinised. Ipsos MORI⁴⁵ did one poll in August 2015, asking under what circumstances respondents would favour holding another independence referendum: asked whether the UK leaving the EU justified another referendum, 52% said yes and 39% no (taking out the 'don't knows', this translates to 57% in favour of a referendum, 42% against). However, whether views on the desirability of holding a referendum would translate reliably into a shift in favour of independence to the same degree is unclear.

If polls do start to show such a shift, then the SNP will come under huge pressure to call for another referendum. Yet the voters who last time were not persuaded on issues from currency to pensions to fiscal issues to relations with England, may be more concerned at the potential costs of independence in the face of a stronger future divide between Scotland and the rest of the UK. Facing a potential 'hard' border with England, and a different trading regime, will not help to make the case for independence (and with the falling world oil price posing another substantial economic challenge as to how to manage independence).

If the polls do shift, some will argue for a rapid referendum while resentment at Brexit is at its highest. Others may suggest caution, since the arguments – from currency to borders to fiscal policy – will have to be stronger and more persuasive than in 2014. Many are not persuaded that, despite an initial outcry, the EU is, or will become, salient enough to run a second referendum on the basis of Brexit, and consider that the best strategy for a successful second independence referendum is to wait until 2021

following UK elections in 2020 and Scottish elections in 2021. Some commentators worry about 'referendum fatigue' after two referenda and two elections in under two years (if the EU referendum is held in June⁴⁶). Others argue that, in the face of Brexit, the pro-independence side will be the 'good guys', the ones who want to be part of the EU, not the Brexit trouble-makers. There will be debates a-plenty across a large range of groups and individuals, as well as within the SNP, as to how to proceed (and some scenario-planning by the SNP is clearly already taking place behind closed doors).

Scotland outside the EU?

The huge difficulty, if there is no immediate second independence referendum in the face of Brexit, is that Scotland will then leave the EU along with the rest of the UK – with major associated political and economic costs. Scotland will have to attempt to influence the UK government's complex and difficult talks with the EU that will determine the UK's new relationship with the EU – and part of that new agreement will involve major changes in domestic (previously EU) laws, trade agreements and so forth requiring amending, repealing, retaining or revising very large amounts of legislation.

If and when Scotland did then have a second independence referendum, the argument about a smooth transition to being a new EU member state would no longer apply. Scotland would have joined the rest of the UK outside of the EU, and so it would indeed at that point have to apply to re-join the EU through its normal accession process.

The amount of resources and time that would be involved in first repealing, amending and/or replacing EU legislation, funding programmes and so on to leave the EU, and then to change everything back to fit with the EU's *acquis* as and when Scotland re-joined the EU, would place a substantial burden on Scottish politicians and officials – one that a more rapid move to independence would obviate. Whether that challenge will influence public or politicians on shifting to independence (and on the timing of that shift) is unclear, but it will surely be part of political considerations and debates.

The one area where there seems to be clear agreement across much of the pro-independence side is that a second independence referendum

44 "Independence referendum anniversary poll" Survation 11th September 2015 for Scottish Daily Mail

45 "How stable is the UK constitutional settlement?" Mark Diffley Ipsos-MORI Almanac competition August 2015

46 "Why Scotland faces a doomsday scenario over Brexit", Iain Macwhirter HeraldScotland 20th December 2015

will represent the last chance for decades to achieve independence. If the referendum were lost a second time, few anticipate there will be a chance to have yet another go in the near or medium term. Shadows of Quebec losing its second independence referendum in 1995, and losing political momentum for independence, are there, if only occasionally mentioned⁴⁷.

Yet whether done fast or more slowly, the move to a second referendum – in the face of a Brexit – will always have to face the new conundrum of an independent Scotland in the EU (perhaps having first left the EU then re-joining), with the rest of the UK outside. The only way to avoid that conundrum on becoming independent would be to remain outside the EU in whatever sort of regime the UK has set up. Such a position would hardly give Scotland much voice or influence in Europe, and its relations with the EU would be largely determined by whatever deal the UK had previously come to – hardly a compelling vision of independence.

Making political capital

Whatever the strategy on a second referendum or not, in the face of Brexit, the Scottish government and SNP, and other pro-independence groups and parties, will be likely to make as much political capital out of the crisis as they can – both amongst Scottish voters, and across the EU.

If Northern Ireland and Wales have also voted for the EU, there will probably be substantial coordination of reactions and demands across the three, in the face of a UK constitutional crisis. The Scottish government and civil servants already have fairly strong relations with Ireland, and in the face of Brexit, there will be strong common interests, between the Scottish and Irish governments, in how to handle future border and economic challenges with the rest of the UK.

With Ireland having a strong say in how the EU 27 member states handle exit negotiations with the UK (the process handled by the European Council, minus the departing member state, according to Article 50 of the Lisbon Treaty), Scotland may also want to do its best to influence the positions Ireland takes on borders, free movement, and other key issues important for an independent Scotland in the future. Scotland's government may also turn rapidly to

Brussels, arguing for assistance in its wish to stay in the EU, with Nicola Sturgeon (and perhaps the Welsh and Northern Irish leaders) appearing rapidly in Brussels, asking for support and advice. The negative stance on Scottish independence from Brussels (and associated scaremongering) in the run up to the 2014 referendum is likely to change significantly at this point. The EU will face its own political challenges with a major state like the UK choosing to leave, and the desire of Scotland to stay in the EU will be in many ways welcome, showing the EU remains a pole of attraction to one part – or indeed three parts – of the UK.

The EU will not take a stance on the desirability of Scottish independence, in the face of Brexit – it does not intervene in constitutional structures of member states – but the concern that Scottish independence could encourage Catalonia (and others) may be much less strong across the member states, at that point, than it was in 2014 with the exception of Spain. Brussels is likely to make much more positive, constructive comments as to how Scotland could transition relatively smoothly to becoming a full member state if it did become independent. In fact, it would surely be incumbent on Brussels at that point (after a Brexit vote and if Scotland was leaning towards having a second independence referendum) to offer at least some constructive options as to how that might happen (rather than the negative scare-mongering of the European Commission in 2014).

Political and Constitutional Crises

A number of political and constitutional crises between Scotland and Westminster may be provoked by Brexit:

- **Westminster-Edinburgh dispute holding a new independence referendum:** If Nicola Sturgeon and the SNP did go for a rapid second independence referendum – capitalising on a strong swing in opinion and aiming to keep Scotland in the EU before the rest of the UK got into the detail of Brexit talks – would Westminster agree to a new referendum? If not, there would be a major political stand-off. One argument from Westminster might be that Scotland needed to see what deal the UK got with the EU before it decided its future. Yet since such a deal might take years to negotiate and since, once the

47 For an overview, see "The Quebec referendums" [House of Commons Research Paper](#), Ben Smith 13/47 25 July 2013



deal was agreed, Scotland too would be outside the EU, this argument might be rejected by many in Scotland⁴⁸.

In the face of a Westminster refusal to agree to a referendum, the SNP would have to decide at that point whether to go ahead, and on what basis, to hold its own indicative referendum. Relations between Edinburgh and Westminster would be at breaking point.

The EU would doubtless stand back from any public pronouncements at such a moment, yet it may need to get involved behind the scenes if such a conflictual situation started to evolve. In particular, if the EU is about to embark on long and complex exit talks with the UK, it will want to be sure whether the negotiation is with the whole of the UK, or minus Scotland. A Scottish decision to hold an independence referendum would immediately raise questions in Brussels as to whether, how, and on what basis to proceed with exit talks or whether to wait for the independence referendum and for agreement between rUK and Scotland on how to handle the outcome of that new vote.

- **Participate in, or block, repealing and amending EU legislation?** If Brexit talks go ahead, and Scotland is not immediately holding a second independence referendum, the Scottish government, and Scottish parliament will have to consider whether they will participate in the extensive amending and repealing of legislation that will be necessary during this process.

While the UK government takes political responsibility for EU law and policy, the Scottish parliament passes many of them into law in devolved areas, and EU law is part of devolution statutes in the Scotland Act 1998. Under Brexit, there may well be a constitutional and legal challenge as to whether the UK government can demand or force the Scottish parliament to repeal EU legislation.

It has been suggested that this would require a so-called 'legislative consent motion' – and that this may not be forthcoming from

Scotland. In her in-depth discussion of this, Douglas-Scott puts the situation with dry understatement: "[T]he need to amend devolution legislation renders a UK EU exit constitutionally more complicated⁴⁹". She goes on to argue that if the UK government pressed ahead without legislative consent: "we would enter uncharted constitutional territory". Douglas-Scott considers that ultimately the UK parliament "could legislate for Scotland without consent but only explicitly, in which case it would have to take the political consequences." The potential for a major crisis and stalemate is clear.

This crisis might not occur in the first year or two after a Brexit vote, since the UK will have to negotiate with Brussels its exit arrangements, and this potential for blocking and stalemate will only arise once laws start to be repealed – unless the Scottish government announces early on, as it may well, that this it intends to block and challenge.

- **Challenge loss of acquired rights for citizens and businesses?** In addition to arguments about the constitutionality of demanding the Scottish parliament repeal EU legislation, there will also certainly be legal demands and challenges to the Brexit process in terms of acquired rights that both individuals and businesses will have accrued over the decades of EU membership (including those in other EU member states with interests in the UK). Dealing with these issues will doubtless be a major issue in the UK-EU talks⁵⁰, but depending on what deal is done, including on transition periods (for instance for students, businesses, pensioners living in another member state and so on), there may be many, across the EU, who will challenge – through the courts – the specifics of the deal struck. The Scottish government will surely want to consider challenging any loss of acquired rights in a number of areas as the negotiating process develops.

The Scottish government will, therefore, face major decisions as to whether, and on what basis, it would go along with Brexit processes including amending and repealing legislation, or whether to go for a political strategy of attrition

48 "Rough waters ahead for Scotland if the UK votes 'no' in EU referendum" Kirsty Hughes, Open Democracy website, August 2015

49 "Briefing by Professor Sionaidh Douglas-Scott on EU reform and the EU referendum: implications for Scotland" 2015, Scottish Parliament European and External Relations Committee; see also "Changes to the UK's EU Membership Might Require the Consent of the Scottish Parliament" 2015, Cormac Mac Amhlaigh, [European Futures](#) website, University of Edinburgh.

50 "Briefing by Professor Sionaidh Douglas-Scott on EU reform and the EU referendum: implications for Scotland" 2015, Scottish Parliament European and External Relations Committee

and blocking – on constitutional, and rights, grounds – and create a longer-running and potentially very deep political crisis. How long it could do this for without then moving to a second independence referendum would be a key, and, open political, and legal, question.

- **Will Scotland have a say in the new UK-EU relationship?** Even if the Scottish government adopts a more conciliatory approach to managing Brexit, Scotland – and Wales and Northern Ireland – will want a considerable say in what sort of future relationship the UK negotiates with the EU. Yet if the UK government at that point is led by a new, highly eurosceptic Prime Minister, the views of the other parts of the UK may hold little sway. The SNP needs to decide, in terms of contingency planning, whether it would for example, argue for the UK to be in the European Economic Area, as the least damaging route in the short term (ahead of whenever it did eventually hold a new independence referendum). Yet the minimal influence the Scottish government has over EU decisions taken by the UK government today, does not suggest that a fully participative approach to negotiating Brexit, across all four parts of the UK will be the route the UK Prime Minister will choose. However, demands for a full say could well be linked by devolved administrations to the critical questions above of whether to give legislative consent to repeal of EU legislation. The UK Prime Minister would have to consider his or her strategy extremely carefully at that point.
- **Could Scotland push for a differentiated relationship with the EU?** If the UK government, after a vote for Brexit, pushed for a free trade agreement with the EU that was not in Scotland's interests, and unwound much of the UK's current relationships with the EU, could Scotland push for a differentiated relationship, so that while remaining part of the UK, and being outside the EU, it nonetheless kept closer links in a number of areas⁵¹?

There are no precedents here – although there are precedents for states that are in the EU to have somewhat different relationships across some of their constituent parts (such as Denmark and Greenland, or the case of Cyprus – where northern Cyprus is in the EU, despite the division of the

island, but the *acquis* is suspended). Scotland could argue it wanted to secure or keep closer relationships with the EU, for example, on climate policy, energy, fisheries, agriculture or education. Brussels might be open to such a creative solution, though that would not be guaranteed, but the big question would be whether the UK government would be open to discussing this or would veto it? Clearly, the more the Scottish government can do to keep Scotland in line with EU laws and policies, the easier it would be in the future for an independent Scotland to re-join the EU, and equally the more the costs of Brexit for Scotland could perhaps be reduced.

A National Debate on the EU after Brexit?

If the UK votes to leave the EU, this will permanently change the UK and EU landscape for Scotland – either Scotland will be out, in some new detached relationship to the EU with the rest of the UK, or it will be in the EU while the rUK is out. Even if the UK stays in, it will remain a semi-detached player with its range of opt-outs. If Scotland chooses independence in the future, it will need to decide what sort of role it wants to play with, and (most probably) in, the EU.

In the face of the political crisis and debate that is likely to erupt immediately after a Brexit vote, Scotland could take a leaf out of Ireland's experience when its voters rejected the Nice Treaty in 2001. Ireland set up a National Forum on Europe bringing together all the political parties in a roundtable, open to experts, the public, diplomats and media, to discuss the EU in a broad and open way. The Forum was charged with promoting informed debate – not coming to a specific conclusion – and it frequently and deliberately drew on experts from outside Ireland to address the convention on a range of issues.

If Scotland votes to stay in the EU, and England to leave, a Scottish forum on Europe could have a wide-ranging discussion – with meetings across Scotland – on the options and issues it faces. This could range from the challenges and choices that would face an independent Scotland if it were in the EU and rUK outside, to the sort of relationship with the EU that would be most in Scotland's interests if it, with the rest of the UK leaves.

It could also debate the question of how fully engaged with the EU in future Scotland wants to be. Even if the UK stays in the EU, it will be a semi

⁵¹ See, Kirsty Hughes (2015) "How could Scotland protect its EU links after Brexit?" Europa Institute website, Edinburgh University



-detached, opted-out, low influence member state. Debates are beginning again in Brussels as to whether the EU should set up a formal 'two-tier' structure to reflect the differences between those who want to continue with further integration and cooperation, and those like the UK who are more reluctant.

Would Scotland want to be in an outer-tier of the EU? As one commentator puts it: "Pro-European voters in Scotland may be looking for a more imaginative vision of what Scotland, as a small nation at the heart of Europe, might achieve.⁵²" Smaller member states do have influence in the EU, and Ireland amongst others has found being an independent member state in the EU⁵³ helped give it a relationship of equality with the UK on the EU stage – again parallels there for Scotland to consider.

The advantage of such a national forum and conversation in the face of Brexit is that it can promote a real debate about Scotland's place in Europe, and the current state of Europe, rather than an immediate polarisation around independence. Since the UK will take some time to begin Brexit negotiations with the EU, a serious debate across Scotland, at the same time as the Scottish government picks up the political challenges at UK level, could resonate positively – including with the rest of the EU.

4. Managing Independence after Brexit – three parallel sets of talks?

If Scotland, in the face of Brexit, did go for a rapid, and successful independence referendum, this would open up a number of new questions concerning how to manage the separation of Scotland and the rest of the UK, at the same time as the UK was managing Brexit⁵⁴. Key political and legal questions would be likely to focus on the sequencing of talks between the various parties.

If the rest of the UK argued it should go ahead and negotiate its Brexit deal with the EU first, this would be likely to delay independence for several years. Moreover, the deal the UK might agree – and all the legislation that would go along with it (both repealing, amending and passing new legislation,

agreeing new trade treaties and so forth) – would then not necessarily be the same deal that would make sense for a UK without Scotland.

Yet if Scotland and the rest of the UK negotiated their constitutional separation first, while both were still in the EU, this would also be problematic. While both countries are in the EU, having an open border is straightforward; once the rest of the UK leaves the EU, and once the terms of that are clear, this will (as discussed above) pose many questions for Scotland and England, and for Ireland and Northern Ireland, about how their borders (now external borders of the EU) are managed – an issue which would very likely impact on Scottish discussions with the EU about opt-outs in the area of border management.

One intriguing possibility here is whether, if Scotland moved rapidly to independence, it might join the EU while rUK was still in talks with the EU on Brexit. If independence took two years (for the second independence referendum and separation from the UK after the referendum) plus one year for talks with the EU – and two years for ratification of an accession treaty (if required) – then the whole process would take three to five years. While rUK talks with the EU on Brexit might take longer than that to complete, in terms of revising a range of laws, trade treaties etc, the political pressures, from both sides, would be likely to be for Brexit to occur fairly quickly, with transition phases after Brexit, rather than have the UK as a formal member of the EU – still with voting powers – taking 5-10 years to leave. In any event, if rUK-EU talks were still under way when Scotland was ready to be an independent member state, the rUK would still be an EU member state so it could potentially veto Scotland joining before its talks were completed.

Three parallel sets of talks: The only solution would appear to be to hold three sets of talks in parallel – with links across the talks: Scotland and rUK talks on separation; rUK-EU talks on leaving the EU (Brexit); and Scotland-EU talks on the basis for Scotland to become an independent member state⁵⁵.

This would be complex, and very demanding on resources and on all those participating. Yet it would also seem the only way that issues such as

⁵² "Scottish independence and the EU" (2014) Michael Keating 'Discover Society' website

⁵³ "Breakaway Scotland could form new alliances in the EU" Kirsty Hughes, BBC website, January 2012

⁵⁴ The Scottish Parliament's European and External Affairs committee is currently holding an inquiry into the impact of the UK's EU referendum on Scotland but it is not considering as part of that a possible shift to independence.

⁵⁵ "3 scenarios for the outcome of the UK's EU referendum" (2015) Kirsty Hughes Open Democracy website; "Written evidence to the Scottish Parliament's European and External Affairs Committee into 'EU Reform and the EU Referendum'" (2015) [Kirsty Hughes](#)

borders, currency, EU opt-outs – or not – for Scotland, and so forth could be determined in a consistent and coherent way. Ireland would, of course, be a major player in the EU talks, and it would quite likely also have a separate, fourth set of talks – Ireland-rUK – on managing the border, common travel area and other issues, also in parallel. Scotland may well be able to strike some of its deals with rUK following on from whatever Ireland agrees on borders, right of Irish citizens to live and work in rUK and so forth.

EU opt-outs: Scotland would face a significant set of talks with the EU on its membership as a new state. While voting rights, numbers of MEPs, and similar issues would all be straightforward, as set out in the Lisbon Treaty, the most difficult issues would be where the UK currently has opt-outs⁵⁶.

Currency: Many on the pro-independence side consider that the question of Scotland's future currency (and whether to share the pound or not) was not dealt with well enough to assuage many 'no' voters' concerns in 2014. Given rUK's refusal in 2014 to countenance sharing the pound, the best approach may be to develop a sound policy for a new Scottish currency. Scotland is likely to find, in that case, that the EU will not give it an opt-out on joining the euro, as the UK and Denmark currently have. Whether it could adopt, like Sweden, a position of implicit rejection of joining the euro is an open question. It may have to sign up in principle for joining the euro one day – which would be controversial in Scotland.

Borders: Given that both the UK and Ireland are not part of the Schengen border-free area (under major stress anyway due to the current refugee crisis), an independent Scotland may be unlikely to be pushed to join Schengen, assuming both it and Ireland have negotiated with rUK on ways to keep relatively open borders between them. Scotland will be expected, as today, to participate fully in free movement of labour, something SNP politicians have strongly endorsed. This though will complicate its – and Ireland's efforts – to negotiate open borders with rUK as it leaves the EU (assuming rUK does not keep free movement of labour in its new rUK-EU relationship).

Other opt-outs – hard to retain: Scotland would find in such talks that it would be expected to sign up fully to the EU's justice and home affairs set of policies and laws. The SNP were critical of the UK's opt-out/opt-in deal that the UK invoked in 2012 (as part of an agreement under the Lisbon Treaty⁵⁷) yet, despite that, in 2014 they suggested they would argue to keep all the UK's opt-outs⁵⁸. Whether this is achievable or the right goal is open to debate – as Keating puts it: “[Scotland] would need to decide this time whether it is to be a core or peripheral EU member⁵⁹.”

Scotland will find it extremely hard to keep the UK's budget rebate in its EU membership talks. The EU member states would have liked to get rid of the rebate many years ago but the UK has defended it through many budget agreements. Scotland may find it can get its share of the rebate for its first couple of years (if it joins before the next full EU budget settlement is agreed) but Brussels would be unlikely to agree any deal that meant Scotland might try to keep the rebate in future budget rounds (the next starting in 2021).

Overall, in the face of the complexity of holding three parallel sets of talks – Scotland/rUK, rUK/EU, and Scotland/EU, the negotiations over EU opt-outs, though politically contentious, may well not be the most difficult or controversial part of the process.

One challenge would remain, discussed during the 2014 independence referendum, which is, if Scotland becomes independent before its new member state status is fully agreed with the EU, how would any such transition be managed⁶⁰. One central issue here is whether the EU would require the agreeing of an accession treaty for Scotland – which could take two years for ratification by all the 27 member states (excluding rUK which is leaving).

That is a political as much as legal question which, in the face of Brexit, the EU may look much more creatively on than it did in its public comments in 2014. Depending on the timing of talks and treaties, there might be a transition period where Scotland remained in the EU but without voting

56 “Scotland and the EU after independence” (2013) Michael Keating, Briefing ESRC Scottish Centre on Constitutional Change;

57 Kenny MacAskill, Scotland's then Justice Minister, criticised the opt-out, as outlined in “Britain's 2014 Justice Opt-out: Why it bodes ill for Cameron's EU strategy” (2013) Hugo Brady, Centre for European Reform

59 “Scotland's Future: your guide to an independent Scotland” (2013) Scottish Government

59 Michael Keating ‘Written evidence to Scottish Parliament's European and External Affairs Committee inquiry into EU reform and the EU referendum: implications for Scotland’ 2015

60 “Accession of an Independent Scotland to the European Union: a view of the legal issues” Stephen Tierney, December 2013, Briefing Paper, ESRC Scottish Centre on Constitutional Change



rights until its member state status was agreed – that may be politically contentious but if it happened it would be for a relatively short period of time, and compared to having to leave the EU and re-join (if Scotland initially participated in Brexit) it is not the most difficult challenge by any means.

Independence some years after Brexit? If Scotland, rather than having an immediate independence referendum after a vote for Brexit, went for a referendum several years later (which it won), then, instead of a process of three parallel sets of talks, the various talks would instead be sequenced over time. The UK would have left the EU, and negotiated a new relationship over a number of years. Scotland would then (having won an independence referendum say in 2021 or

later) negotiate its separation from the UK, and could then apply to re-join the EU, which would take a few years (the length of time depending on how far it had deviated from the EU's laws and policies due to Brexit, allowing also for ratification of its accession treaty).

Such a sequence would divert substantial resources away from all the challenges of developing the institutions and policies for an independent Scotland into, instead, the processes for re-joining the EU. While many on the pro-independence side may prefer the option of a second independence referendum in 2021 (after the next UK general election in 2020 and Scottish parliament elections in 2021), the complications and resources that Brexit would impose on that timetable, will need careful consideration.

Conclusion – Options for Scotland in the face of Brexit

If the UK votes to leave the EU at the upcoming referendum, the implications for Scotland are many and challenging. The route to independence would in many ways be made much more complex and difficult if the UK votes for Brexit, while Scotland votes to remain in the EU.

Yet while some pro-independence voices in Scotland caution against rushing into a second independence referendum in the face of Brexit, the challenges for Scotland if it, along with the rest of the UK, leaves the EU, mean that a rapid push for independence could make strategic sense. Such a rapid push – even assuming Brexit led to a big shift in the Scottish polls in favour of independence – would also contain many risks. Splitting from the rest of the UK when rUK is no longer in the EU is more difficult, and may be less appealing to voters, than doing so while both are in the EU.

Four options for Scotland in the face of Brexit:

In the face of a UK vote for Brexit, Scotland will have to choose amongst four broad options:

- **Brexit:** Scotland could leave the EU along with the rest of the UK.
- **Rapid independence referendum:** Scotland could go for a rapid second independence referendum aiming to stay seamlessly in the EU while rUK left.
- **Challenging, Blocking and Stalling:** Scotland could adopt a combative political strategy, aiming to hinder and challenge the Brexit process on constitutional and legal grounds – drawing the process out, and creating a major crisis, over a number of years (and perhaps then going for an independence referendum on the back of greater support driven by Brexit and the subsequent years of crisis).
- **Brexit and Differentiation:** Scotland could aim to negotiate with the EU, and Westminster, for a differentiated deal for Scotland, as part of the UK outside the EU – something that has no precedent in the EU.

The choice between these broad options will not be easy. It will depend on the public and political reactions across Scotland to a vote for Brexit – and on the reactions to the Brexit vote in the rest of the UK and across the EU.

It is clear that Scottish independence would be much more straightforward if the UK remains part of the EU. Yet if the UK electorate vote for Brexit, Scotland will be faced with a series of tough choices, debates and negotiations.

Scotland may hope the UK votes to remain in the EU, but its politicians must make their plans now in case of a Brexit vote.

Author

Kirsty Hughes

Kirsty Hughes is an Associate Fellow at Friends of Europe. She has worked at a number of leading European think tanks and has published extensively on European and international politics including books, reports and as a journalist. She has also worked as a senior political adviser in the European Commission, for Oxfam as head of advocacy, and was CEO at Index on Censorship.



Friends of Europe is a leading think-tank that aims to stimulate new thinking on global and European issues that span political, economic, social and environmental challenges. Our publications and debates produce sharp analysis and bold solutions because we promote the confrontation of different ideas.

Friends of Europe is part of the Europe's World Group an alliance that also includes the Europe's World policy journal and the Debating Europe online platform.

Contact us:

4, Rue de la Science, B-1000 Brussels - Belgium

Tel.: +32 (0)2 893 98 19- Fax: +32 (0)2 893 98 29

info@friendsofeurope.org

www.friendsofeurope.org

