
Scotland and the European Union

Graham Avery

BACKGROUND

The results of Britain's referendum on EU membership on 23 June 2016 were:

	Population	Leave	Remain
United Kingdom	65.1 m.	52%	48%
England	54.7 m.	53%	46%
Scotland	5.4 m.	38%	62%
Wales	3.1 m.	52%	48%
Northern Ireland	1.9 m.	44%	56%

Since Scotland voted by 62% to remain in the EU, while the United Kingdom (UK) voted by 52% to leave, the question of Scottish independence is on the table again. The Scottish government says that Scotland should not be taken out of the EU against the will of its people, and that a second referendum on independence is "highly likely". In a referendum in September 2014 the Scottish people voted against independence. Opinion polls currently suggest that a majority in Scotland wants another referendum, and would vote for independence.

How does the Scottish question relate to the UK's withdrawal from the EU? What factors have changed since the Scottish people voted against independence in 2014? What are Scotland's chances of remaining in the EU?

STATE OF PLAY

Scotland's First Minister Nicola Sturgeon, leader of the Scottish National Party (SNP), handled the EU referendum with distinction: she campaigned for the UK to remain in the EU and delivered a large majority in favour of it. Britain's Prime Minister David Cameron, who launched and lost the referendum, resigned, and his Conservative Party has chosen a new leader. The leader of the opposition Labour Party, Jeremy Corbyn, is under challenge. British politics is in confusion, and uncertainty is amplified by the fact that in the referendum the Leave campaign presented no coherent plan for managing the UK's withdrawal from the EU. Some political voices are now suggesting another referendum on the EU, or parliamentary elections, to determine the way ahead.

In this chaos, Sturgeon has appeared to be the only leader with a plan: she announced immediately that another referendum on Scottish independence would be prepared as an 'option', and in meetings with the Presidents of the European Parliament and the European Commission she underlined Scotland's wish to stay in the EU. But Sturgeon is characteristically prudent. Before the referendum she urged Cameron to accept that withdrawal from the EU should be conditional on the consent of the four countries of the UK: he refused (which perhaps he now regrets). She maintains that her government's priority is to keep Scotland in the EU, that all options are on the table, and that independence is not the starting-point. She is not yet committed to another referendum; she knows that it would be unwise to launch one without being confident of the result.

Britain's withdrawal from the EU

With multiple uncertainties surrounding the timetable and results of Britain's negotiation for withdrawal from the EU, the Scottish government has every reason to be cautious. If the British government makes a notification under Article 50 at the end of this year, as some Conservatives suggest, then probably the United Kingdom would leave the EU on 1 January 2019. But the future is uncertain: if there is another British referendum, or a change of government in London, the situation could change.

In withdrawal negotiations, which are intergovernmental in character, the British government will represent the UK. Scotland will not have a separate voice. That is why EU governments say that only London is competent to conduct the negotiations, and why Sturgeon was not received by Donald Tusk, President of the European Council. Prudently, most European leaders wish to avoid interfering in the UK's internal constitutional affairs by taking a public position on Scottish independence.

Cameron has said that "withdrawal negotiations need to involve the full engagement of the Scottish, Welsh and Northern Ireland governments to ensure that the interests of all parts of the UK are protected and advanced". What this means in practice remains to be seen. In any case, London will not wish withdrawal negotiations to provide for the possibility of an independent Scotland remaining in the EU, unless and until Scotland chooses independence.

The terms negotiated for British withdrawal will be an important factor. If the UK obtains good access to the Single Market and to other EU policies of interest to Scottish people that could be sufficiently attractive for Scotland to remain in the UK. Although Sturgeon is working to ensure broad support in Scotland for her position, there are some who would prefer to leave the EU: the fishing industry, for example, wants to escape from the Common Fisheries Policy.

Changes since Scotland's last independence referendum

What factors have changed since September 2014, when Scotland voted against independence? How could they affect a future independence referendum?

- The SNP has enjoyed a surge in public support. Its membership has more than doubled. In 2015 it gained 56 seats in the Westminster parliament, where it is now the second largest opposition party. In 2016 its seats in the Edinburgh parliament decreased from 69 to 63, but it remains in power with a minority government.
- The EU referendum has had a powerful effect on public opinion in Scotland. Many who voted against independence in 2014 say they would now vote for it, in order to remain in the EU. The atmosphere of xenophobia, distrust and deceit in which the referendum was conducted has increased Scottish dissatisfaction with British politics and 'English nationalism'.
- Scotland's economy has not flourished. Growth has been lower, and unemployment higher, than in the rest of the UK. Although Scotland has offshore energy resources, the price of oil has fallen. Uncertainty about future economic prospects was a key factor in the 'no' vote in 2014.
- Although Scotland's economy has become more integrated with the EU, its exports to the rest of the UK are four times more in value than its exports to other EU members. The possibility that future trade between Scotland (in the EU) and the rest of the UK (outside the EU) may face barriers is a new factor in the economics of independence.
- However, in the EU referendum a majority in England and Wales ignored economic warnings and voted for self-government. The Scottish people may do the same.

Scotland's chances of remaining in the EU

From the point of view of the EU, Scotland is well qualified for membership. It has applied EU rules and policies for more than 40 years; it is a prosperous and stable democracy, with a population of 5.4 million and an economy twelfth in size within the EU; its situation would be similar to that of member states of comparable size such as Ireland or Finland. Membership of the EU was a central element in the Scottish government's prospectus for independence in the 2014 referendum. It is worth recalling that, of the thirteen states that joined the EU since 2004, seven had recently obtained or regained independence.

Scotland has many historic links with the continent. Attitudes to social policy are similar to those in Nordic countries, and there is widespread dislike of policies pursued by Conservative governments in London. Public opinion has been more favourable to the EU than in England, and the Scottish government's attitude to most

European policies, including free movement of workers, has been positive. After the EU referendum, Nicola Sturgeon was the first political leader to request reassurances from the British government for the future of EU citizens living in the UK.

What elements have changed since the 2014 referendum, when Scotland's accession to the EU was already under discussion? At that time, most EU members disliked the idea of Scottish independence, which would have weakened the UK. Now, as a result of its vote to leave the EU, the UK has lost goodwill, and weakened its international position, while Scotland has won sympathy by its vote to remain. Nevertheless, some European states, concerned by the rise of separatism, may be reluctant to see the UK weakened further by Scottish independence.

In 2014 some commentators argued that an independent Scotland must leave the EU, apply for accession under Article 49, and join the queue of candidates. Others argued that a 'fast-track' accession could be made under Article 48. José Manuel Barroso, then President of the European Commission, claimed that it would be "extremely difficult, if not impossible" for Scotland to join the EU. How does that claim look now?

Visibly different. Within a few days of the EU referendum, Scottish MEP Alyn Smith got a standing ovation in the European Parliament, and First Minister Nicola Sturgeon had meetings with Presidents Martin Schulz and Jean-Claude Juncker. Most European governments are now well-disposed to Scotland as a result of its vote to remain in the EU. But friendly faces can mask hard realities. For Scotland to stay in the EU, all member states must agree. Would they?

The main obstacle is the political interest of Spain. Madrid considers that Catalonia's demand for an independence referendum is contrary to the Spanish constitution, and wishes to avoid any encouragement for Barcelona. Other member states such as Belgium have independence movements, and may become concerned if the prospect of Scottish independence is strengthened by the UK's departure from the EU.

But it is in the material interest of the EU, including Spain, to keep Scotland - with its contribution to the EU budget and its extensive fisheries resources - inside the EU. Since Scotland's referendum in 2014 was part of a constitutional process, Spain would have recognised Scottish independence if the vote had been 'yes'. It would not have facilitated Scotland's accession, but would have accepted it on the basis of a confirmation of the EU's respect for the constitutional arrangements of its members.

It is true that Spain, Slovakia, Romania, Greece, and Cyprus have refused to recognise Kosovo because its unilateral declaration of independence from Serbia in 2008 could be a precedent for separatists in their own countries. But it is also true that Spain and all other EU states immediately recognised Montenegro in 2006 when its independence from Serbia resulted from a constitutional referendum. Madrid, which expects other states to accept its interpretation of the Spanish constitution, will respect London's position concerning the constitutionality of Scottish independence.

However, it is not sure that the Westminster parliament would agree to another independence referendum for Scotland. The reason why it consented to the 2014 referendum was that the SNP, with a manifesto demanding a referendum, had won a majority in Scottish elections. Although the SNP no longer has a majority in the Edinburgh parliament, it could expect the Green Party to support a demand for independence. How would London respond? The Conservative Party, mainly responsible for the departure of the UK from the EU, will not want to be responsible for the break-up of the UK. With a majority in the House of Commons, it may refuse consent for another referendum on the grounds that the 2014 referendum – a 'once-in-a-generation' vote – was decisive. That would leave Scotland the option of declaring independence unilaterally, which would weaken its international position.

If Scotland chooses independence, what procedure would be followed for it to remain in the EU? The use of Article 48 or Article 49 of the Treaty was much discussed in 2014, and now we have Article 50 in prospect. Since Article 50 will modify the geographical scope of the EU, it could take account of the Scottish case. It has been suggested that Scotland could be designated as the UK's 'successor state', and thus inherit its EU membership, but this would not be easy: London would not agree to Edinburgh inheriting other memberships such as the UN and NATO, and the EU would not accept Scottish membership without an assessment of its compliance with the criteria for EU membership. On these questions of procedure, the choice of Articles is an important matter for examination by legal experts, but what will be decisive for Scotland's accession is the political will of Europe's leaders.

If and when a negotiation on Scotland's accession to the EU takes place, much will depend on whether the Scottish government requests special terms. It would not be realistic to ask for the British 'opt-outs', which anyhow are unnecessary – no country has ever been obliged to join the euro or Schengen unless it wished to do

so. But Edinburgh has difficult questions to answer: for example, what currency would it use after independence – the pound Sterling, or the Scottish pound?

Scotland is not the only country of the UK whose situation is affected by the EU referendum:

- Wales voted to leave. The leader of Plaid Cymru, the nationalist party, said 'If Scotland's protection of its EU membership results in it choosing to leave the UK, people in Wales should be given the option of choosing the same at a referendum'.
- Northern Ireland voted to remain. Its First Minister, whose party campaigned to leave, welcomed the UK result; the Deputy First Minister, whose party was for remain, said that Northern Ireland should not be taken out of the EU against its will, and demanded a vote on the reunification of Ireland. The British government excludes such a possibility. There is concern that the reintroduction of controls at the frontier with Ireland could disturb the peace process in Northern Ireland.
- England voted to leave. Of the four English regions, London was the only region that voted differently (60% Remain, 40% Leave) though some areas and cities (such as Oxford and Cambridge) also voted strongly to remain.
- Gibraltar, a dependent territory of the UK with 32,000 inhabitants, voted to stay (96% Remain, 4% Leave). Its leaders, and the British government, have rejected Spain's offer of joint sovereignty as a means to allow Gibraltar to stay in the EU.

Among these cases, the only one directly comparable to Scotland is Wales: it has a long-standing independence movement, but much lower support for independence than Scotland.

PROSPECTS

Scotland's chances of remaining in the EU are good. At the time of the 2014 referendum, Scottish independence was opposed by the British government, and other EU members did not wish to weaken the UK. As a result of the EU referendum, in which it voted to remain, Scotland has gained friends among other Europeans, while the British government has lost goodwill.

But the situation is complicated, and the sequence of future events is unclear. The Scottish government is cautious in not committing itself to another independence referendum. Its priority is to keep Scotland in the EU: it argues that all options should be on the table, and that independence is not its starting-point. These questions – whether Scotland stays in the EU, and whether it becomes independent – are both closely linked to the process of British withdrawal from the EU. But at present many aspects of that process remain unclear.

What position should the EU27 adopt? Scotland is a prosperous and stable democracy that has applied EU rules and policies for more than 40 years. It is well qualified for EU membership. From the economic point of view, it is in the EU's interest for it to remain: from the political point of view, to refuse Scotland after its vote to remain would be a bad signal.

But at present it would be unwise for EU institutions or member states to take public positions for (or against) Scottish independence: it is a tradition of the EU not to interfere in the constitutional affairs of member states. But this does not exclude contacts with the Scottish government, which has embarked on a charm offensive with other Europeans to underline its wish to remain in the EU.

At some time, probably during the next two years, the Scottish government will have to decide whether or not to proceed to another independence referendum. In that situation, the EU should prepare to welcome Scotland as a member.

Graham Avery is Senior Adviser at the European Policy Centre, Brussels, and Senior Member of St. Antony's College, Oxford University. In this briefing he expresses his personal views.

European Policy Centre ■ 14-16 rue du Trône, 1000 Brussels, Belgium

Tel: +32 (0)2 231 03 40 ■ Fax: +32 (0)2 231 07 04 ■ Email: info@epc.eu ■ Twitter: [@epc_eu](https://twitter.com/epc_eu) ■ Website: www.epc.eu



Europe for Citizens
Programme

With the support of the Europe for Citizens
Programme of the European Union.