

EUROPE IS OUR OYSTER

Scotland's Accession to EFTA, EEA and/or the EU

In the seventh paper in the Scottish Independence Convention Transition series, "Europe is our Oyster: Scotland's Accession to EFTA, EEA and/or the EU", Peter Sellar, a private practice lawyer who advises on European (EU) law, recounts that he often hears people living in Scotland saying, "I would vote for independence if I knew we'd get back into the EU". "Understandably", he writes, "they clamour for some certainty in that regard". In this paper he allays doubts and also explains, with great attention to detail, that the EU is not the only possible European option for an independent Scotland. Two other options are available and the paper sets out the pros and cons for joining either the European Free Trade Association (EFTA) or the European Economic Area (EEA) and/or the EU. In summary:

EFTA is a classic inter-governmental organisation which has four current members: Liechtenstein, Switzerland, Iceland and Norway. Between them they have a comprehensive trade agreement, including free movement of workers. And as a collective they have negotiated free trade deals with 40 countries.

Joining EFTA is a relatively light-touch process. Politically, there will be little if any opposition to Scotland joining. After all, Scotland is a country with similar trade and political orientations as Iceland and Norway and a population similar to that of Norway. The distinct advantage of EFTA is that it gives Scotland a greater flexibility to deal with its relationship with the remainder of the UK (rUK). There would be no customs or passport border or currency issues to deal with. However, it offers no formal relationship with the EU.

EEA is the halfway house between EFTA and the EU. For Scotland, EEA accession cannot happen without (at least) EFTA accession first and both processes could happen in parallel.

The EEA ticks a lot of Scotland's needs – free trade provisions with the EU plus three of the EFTA countries, free movement of people (citizens), access to over 450 million people in the single market and no currency debate issues. It would also have some anticipated positive carve-outs for common agricultural, fishing and customs policies, meaning less tension at the independent Scottish/rUK border.

One clear downside is that Scotland would lack any rights to vote on EU legislation, which would in most part simply have to be adopted by Scotland.

The technical process of joining the EEA is light-touch compared with the EU, requiring less change and could be completed within three years. But it will still require adopting a significant chunk of the EU *acquis* (body of law) and being able to show that these can be implemented and enforced by newly established Scottish authorities/bodies.

EU. To accede to the EU, Scotland would have to fulfil political and technical criteria. We do so already for a lot of the criteria while others would require a lot more to be done. For example, Chapter 17 of the *acquis*, on economic and monetary policy, requires a functioning market economy and the ability to cope with competitive pressure and market forces within the EU. We tick most of that but need to set up an independent central bank. Chapter 17 does not require a stand-alone currency, but one will be required after accession given that Scotland has to commit to joining the Eurozone at some point. That said, Montenegro is the current lead candidate country for accession, uses the Euro as its *de facto* domestic currency and has no plans to launch its own

currency. Will the EU make it launch one after it does accede so that it then can go back to using the Euro?

Key to all accession negotiations is that each country is judged on its own merits. There is no queue. Scotland has differences unique to it. There is potential for understandings to be reached on the currency and other issues like Schengen (border control). But certain things cannot be dodged: EU law, for instance, requires member states to avoid excessive deficits. What would Scotland's plan be in that regard after accession?

Becoming a member of the EU will take longer than EU/EEA membership – a fair estimation would be around five years from the date of application.

With independence comes self-determination and, with regard to Europe, the three choices – EFTA, EEA, EU – pose increasing levels of economic and political difficulties.

If an independent Scotland wants to be more like an Iceland or Norway then the EEA *via* EFTA is the appropriate option. It would offer a more flexible trading and border relationship with rUK. It would enable Scotland to defend interests that matter to it such as fisheries and agriculture. But it would mean giving up on having a legal say on most other matters that regulate trade in goods, services and movement of EEA persons.

Politically and practically, if Scotland goes for the EEA option alone, that decision will probably be viewed by the EU as the "final destination" for Scotland. It would be unreasonable to demand that the EU invests time and energy in two separate and consecutive negotiation processes.

If, instead, an independent Scotland has real international ambition to be more like Ireland or Denmark, with the power of veto over big ticket decisions like accession and Treaty amendments, then the option is to apply for EU membership. This, however, will pose the most tension with rUK and will require greater patience and sacrifices. Think, for example, of the issues at the border between the EU and UK since 1 January 2021. An independent Scotland will face similar.

A fully recognised independent Scotland will have no problem getting back to the EU as a fully-paid up Member State if it approaches the accession process with appropriate diplomacy, clear commitments and a genuine intent. There would be no obstacle to accession, not even a Spanish veto. But while Scotland would indeed get back to the EU, "**... it is really up to all of us to make it happen**". And it is up to us in Scotland to balance the sacrifices that each option requires in order to eventually enjoy the benefits that will come with each of them.

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