

# THE EU AND REFERENDA ON INDEPENDENCE: A LEAP IN THE DARK?

Yves Bertoncini | *director of Notre Europe – Jacques Delors Institute*

The referendum on independence for Scotland puts the EU in an unprecedented situation which is worth assessing on the basis of a series of legal, political and diplomatic considerations. Yves Bertoncini takes a stand.

This Tribune has been published in the French version of the [Huffington Post](#) and on [EurActiv.com](#).

## 1. The EU has no choice but to adopt a prudent stance with regard to “regional” aspiration to independence

If Scotland, which as things stand today is simply a “region” of the EU, were to proclaim its independence, that fact would constitute an unprecedented challenge for the EU, and indeed the very prospect counsels prudence on three different counts.

The EEC has been confronted in the past with proclamations of independence from two territories which belonged to a member state (Algeria in the ‘sixties and Greenland in the ‘nineties) but that independence was paralleled by a desire no longer to take part in the construction of Europe. The referendum for independence about to be held in Scotland, on the other hand, has been organised by leaders who not only wish their new state to continue to be a part of the EU, but are indeed very much in favour of the construction of Europe. Thus if the “yes” vote were to win, this would create an unprecedented situation for the EU’s leaders, who would have no clear jurisprudence on the basis of which the EU or its member states might formulate their response.

Their prudence is driven also by the neutral stance officially adopted by the EU towards its member states’ domestic political affairs. Article 4.2 in the Treaty on the European Union states that “*the Union shall respect the equality of member states before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government*”. This means that member states arrange their domestic affairs as they see fit (Spain is regionalised, Germany and Belgium have their own federal system, and so on) and that it is not the EU’s place to interfere in debates relating to their constitutional structure, even if it were only to say that extremely broad internal autonomy would be preferable to outright independence. It also means that

the EU can only start thinking about tailoring its relations to these member states’ new situations once their structure has been profoundly changed by a proclamation of independence, and that it cannot even start today to openly debate a “plan B” designed to cope with such a situation.

The EU’s relatively prudent approach is doubtless prompted by the difficulty inherent in “agreeing and accepting” a regional separatism which flies in the face of Brussels’ contention that “strength lies in unity”. Even if a majority of EU leaders profess “unity in diversity”, they naturally eye identity-related aspirations with suspicion because they consider them to be anachronistic in an era of globalisation which, on the contrary, suggests joining forces in order to acquire greater clout in the face of such powers as China, Russia, the United States, Brazil and so forth. Yet those same EU leaders have no choice but to take on board the fact that aspirations to independence strike a genuine political chord in several EU member states and that they are expressed in a democratic manner. Thus it would be particularly tricky for them to adopt a position in a referendum which, if nothing else, at least has the merit of revealing whether a majority of the electorate is or is not in favour of the creation of new nation states on European soil.

## 2. States proclaiming their independence would have to negotiate their membership of the EU

The EU’s non-interference in its member states’ domestic affairs has a logical corollary: it is the United Kingdom that is a member of the EU, not Scotland. If Scotland were to opt for separation, it would be a brand new country that would have no guarantee of becoming a member of the EU, with which it would have to negotiate its membership.

These membership negotiations could take place in parallel with those between the “newly independent

state” and its current mother state, throughout which period it would continue to be a member of that mother state and thus, *ipso facto*, also of the EU. The negotiations with the EU could take place during or after a transition phase lasting several quarters, beginning with a “declaration of independence” (following a referendum victory for the “yes” vote) and ending with a “proclamation of independence” sanctioning the formal birth of a new state.

Scotland’s considerable economic, financial and human interdependence with its mother state and with the EU might plead in favour of a constructive solution. The fate awaiting the region’s current “European citizens” would doubtless be invoked, also with the European Court of justice, although of course that court might confirm that being a citizen of the EU presupposes being a citizen of one of its member states. The fact that the *acquis communautaire* is already fully implemented in Scotland might facilitate the conduct of membership negotiations, but those negotiations would also have to review the complex balances existing in terms of member states’ individual institutional clout and of their financial relations with the EU.

### 3. The circumstances surrounding the creation of potential new states will have a major impact on their future ties with the EU

A victory for the pro-independence faction in the Scottish referendum would pave the way for the establishment of a new nation state which would be in a diplomatic “limbo”; in other words, it would be in the position of having to wait for international and European recognition without any guarantee of obtaining that recognition: in effect, it would be the product of a kind of “birth-cum-divorce” and the nature of its reception would reflect the specific circumstances attending that birth and that divorce.

The first factor for uncertainty concerns the exact nature of its divorce from its mother state. If, as would be the case in Scotland, it were to be the result of a referendum accepted in principle by the mother state

and based on a contractual compromise, the mother state might resolve to recognise its new neighbour and not to hinder its subsequent aspiration to join the EU. In the event of independence resulting from a clash either over form (the referendum principle) or over substance, as appears to be the case in Catalonia, then the good will of the mother state that considers itself to have been slighted would be far more hypothetical, although the need to find a path leading to mutually beneficial coexistence might encourage the adoption of a pragmatic approach.

The second factor for uncertainty concerns the stance adopted by the other member states towards the “newly independent state”. The five EU member states that have failed to recognise the independence of Kosovo have one thing in common, which is a desire to counter the separatism that is being more or less overtly pursued in their own countries, given that we are talking here about Spain (Catalonia), about Cyprus and Greece (the Turkish Republic of Northern Cyprus) but also about Romania and Slovakia (both of which have substantial Hungarian minorities). Might their principled stand influence their position towards Scotland’s desire for independence and bolster their determination not to set a precedent by agreeing to membership of the EU for it?

At the end of the day, a victory for the “yes” vote in the Scottish referendum would prompt the EU to pursue one of three possible courses of action: to embrace a new member state; to negotiate the kind of “special relationship” with it that it has established with the members of the European Economic Area or with Switzerland; or to classify it as a country benefiting from the “European neighbourhood policy”. So in effect it would not be an outright “leap in the dark” for the EU, but it would plunge it into negotiations that it would very much prefer to avoid in view of the breadth and scope of the other economic, social and geopolitical challenges that it is going to have to face over the coming months.

Managing Editor: Yves Bertoncini • The document may be reproduced in part or in full on the dual condition that its meaning is not distorted and that the source is mentioned • The views expressed are those of the author(s) and do not necessarily reflect those of the publisher • Notre Europe - Jacques Delors Institute cannot be held responsible for the use which any third party may make of the document • Translation from French: Stephen Tobin • © Notre Europe - Jacques Delors Institute

