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**The SNP and the EU Membership issue in the 2014 Independence  
Referendum Debate**

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The Scottish National Party is today one of the oldest nationalist parties in the world, yet its commitment to an independent Scotland did not emerge immediately after its foundation in 1934. The SNP was indeed created from the union of the diverse nationalist movements that emerged in Scotland in the late nineteenth and early twentieth centuries and initially included a very heterogeneous mix of people. Although Unionism was dominant in nineteenth-century Scotland, Home Rule was advocated by a small minority of Scots. The first association created for the defence of specific Scottish interests within the British Empire was the National Association of Scottish Rights (NAVSR), founded in 1853. It was a non-partisan association and it received some support from members of the conservative and liberal parties but was quickly disbanded, as it met violent opposition from most members of the British political class. It was later followed by the creation of the Scottish Home Rule Association (SHRA) in 1886, whose survival was favoured by the Liberal government's projects for Home Rule at the time. Yet, undermined by the apathy of Scottish public opinion on the subject and the violence used by Irish Nationalists at the time, the SHRA was later merged in 1928 with other nationalist associations. These included the separatist-minded Scots National League—founded in 1920, it was opposed to Home Rule and aimed at functioning as an independent political party pursuing independence rather than counting on other parties to obtain autonomous

government—as well as the Scottish National Movement created by Scottish poet Lewis Spence in 1926 in order to defend Scottish culture and obtain the reestablishment of a Scottish Parliament, and the Glasgow University Student Association founded by John MacCormick in 1927 as a socialist and nationalist association including most members of the university's Labour club.

The political party formed in 1928 from the merge of all those associations was called the National Party of Scotland. It initially functioned as a pressure group rather than a full-fledged political party and it aimed at influencing mainstream British political parties' attitudes towards Home Rule. However, it was soon a victim of poor electoral results, inner fighting between separatists and pro-Home Rule activists, as well as competition from a new political party, the Scottish Party. The latter was founded in 1930 and was closely linked to the Conservative party. Its founding members considered that Scottish control of Scottish affairs would contribute in reinforcing the Union and the British Empire: it was therefore staunchly unionist and opposed to any form of separatism. The National Party of Scotland and the Scottish Party finally merged in 1934 into a very heterogeneous political party: the Scottish National Party. Its membership included a mix of separatists and unionists who supported Home Rule, socialists and conservatives and it would long be torn between its fundamentalist members, advocating Scottish independence, and gradualist members, demanding autonomous political institutions within the Union before perhaps moving on to independence. Therefore, since its foundation in 1934, the Scottish National Party has supported various degrees of independence for Scotland and has set its vision of an independent Scotland in various larger political unions. This has included in turn dominion status within the British Empire, self-government within a confederal union of the British Isles and, from the 1980s onwards, independence in the European Union. These successive objectives have resulted as much from the political pragmatism of the party as from an effort to appeal to the Scottish electorate at large, initially weary of severing the ties that bind Scotland with the rest of the United Kingdom.

The SNP's attitude to European integration during the post-war era was one of distrust and suspicion: the party regarded the newly formed EEC as a centralist and elitist body which would not only add an extra layer of bureaucracy but would also favour UK government decision-making over Scottish affairs. It was felt that UK-wide interests

would prevail over Scottish interests, for it was unclear how the latter might be represented. During the referendum on continued British membership of the EEC in 1975, the SNP thus campaigned with the slogan “No voice, no entry” and argued that EEC membership conflicted with the Treaty of Union of 1707. Yet, the outcome of the referendum and the 58.4% majority in favour of continued membership of the EEC in Scotland convinced the SNP that it would have to reconsider its position. This shift of opinion would later be reinforced by Winnie Ewing’s first SNP seat at the European Parliament in 1979 and the new awareness she brought to the party regarding the opportunities the European dimension represented for Scotland. The SNP thus began drawing links between EEC membership and Scottish self-government and argued for a stronger voice for Scotland in Europe. There now emerged the belief among SNP members that the European context could provide an alternative union for Scotland. The EEC could not only bring the country economic support via the European common market and structural funds for underperforming areas, but also potential security safeguards, thus providing an alternative to joining such international organisations as NATO. In 1988, the SNP therefore adopted a policy of “independence in Europe” which appeared to assuage many of the fears brought by independence, namely its costs. The realisation that a devolved parliament could greatly benefit from its involvement with the EU also encouraged the SNP not only to argue that Scottish ministers should be able to take part in the EU Council of Ministers’ meetings, but also to support the establishment of Scotland House in Brussels, together with the creation of a Scottish Minister for European and External Affairs in 2007 and of further links between the Scottish Parliament and other devolved governments in Europe. It is no wonder then that Scotland’s full membership to the European Union took on such importance in the debate leading to the referendum on Scotland’s independence.

Much has been said during the independence referendum campaign about Scotland’s position within the EU if it were to effectively become independent. Yet, no certainties have emerged from the debate, as both nationalists and unionists based their arguments on mere speculations as to the process an independent Scotland would have to follow in order to either enjoy continued membership of the EU or reapply for EU membership. No legal precedent exists for the emergence of a new independent state within an existing EU Member State, neither are there any European legal texts to firmly

define a set process according to which the new independent state should accede to EU membership. In fact, what appeared most clearly during the independence referendum campaign is that much would be the result of political negotiations between Scotland, the rest of the UK, the European Commission as well as the individual European Member States.

This paper therefore seeks to examine the paradoxical nature of the debate over Scotland's EU membership during the independence referendum campaign, in so far as it tended to focus on Scotland's membership to a body which potentially would undermine the very sovereignty acquired by a newly independent state. After assessing the economic and strategic advantages that EU membership represents for Scotland, we thus propose to explore the legal and political consequences of either independence or status quo over Scotland's position in the EU.

### *An Independent Scotland in the EU*

In spite of the Euroscepticism of its early years, it now makes little doubt for the SNP that an independent Scotland should be a full member of the European Union. EU membership represents a salient feature of the current SNP Scottish government's project for an independent Scotland, which it pragmatically considers as "an opportunity for Scotland"<sup>1</sup> in terms of economic development and international reach. The European question took on such importance in the independence referendum debate that the Scottish Government published a separate document entirely devoted to the issue, *Scotland in the European Union*, together with its White Paper on independence for Scotland in November 2013. The Scottish government's detailed White Paper for independence, *Scotland's Future*, presents all aspects of its independence project and explains its plans for full European membership in a sixth chapter devoted to international relations and defence. Both documents describe the economic and strategic opportunities offered by EU membership as well as the conditions and processes leading to it.

According to Scottish government statistics, the EU accounts for around 46% of Scotland's international exports<sup>2</sup> and Scotland benefits from a large number of bilateral trade deals which the EU has negotiated with third countries. Subsequently, EU membership also benefits Scotland in attracting foreign direct investment, as foreign firms

are then able to export to the large Single Market free from import duties and other trade restrictions. Exports to the Single Market—which comprises more than 500 million consumers—also provide an important source of jobs and activities, whilst enhanced competition between suppliers contributes to lowering the prices of goods and services for consumers. In its publications, the Scottish government points out that an independent Scotland would furthermore be able to fully participate in the Europe 2020 growth agenda and benefit from European growth-oriented policies and initiatives, notably those concerning the development of digital technologies, renewable energy, and a transition to a low-carbon economy that underpin much of the Scottish Government’s Economic Strategy for sustainable economic growth.

Scotland also benefits from 160,000 residents originating from other Member States who currently live and work in Scotland, as well as the many EU students who have chosen to study in Scottish universities and could subsequently choose to work in Scotland. This is of particular importance for Scotland as its negative population balance and its ageing population mean that it will need to attract many more migrants in the future. A UK Treasury report of May 2014<sup>3</sup> estimated that Scotland would need to attract 500,000 migrants in the next twenty years to achieve the same balance of pensioners and working-age adults as the rest of the UK. Although the report was published in the aftermath of the European election results, which returned one UKIP MP in Scotland and showed an increasingly insular and protectionist trend across the UK electorate—albeit less so in Scotland—the SNP has insisted that it considers these figures could be achieved through continued membership of the EU as well as more flexible immigration policies for an independent Scotland.

In fact, the Scottish government’s publications also stress that continued membership of the European Union ensures that workers and families’ rights in Scotland will be strengthened and protected by the EU’s social agenda, which it claims matches its own, as illustrated by some of its flagship policies such as the council tax freeze. The Scottish government thus attempts to appeal to the more left-wing and communitarian character of the Scottish electorate and highlights fundamental policy divergences between itself and the Conservative party in power at Westminster.

Most importantly, the Scottish government’s publications stress the benefits that independence would bring to Scotland in terms of its position and voice on the

international stage. An independent Scotland would indeed be able to participate fully in EU affairs and directly advance its own priorities and economic interests at the negotiation table:

In the EU, an independent Scotland will be able to engage early and directly across the range of the Union's activities, ensuring Scottish interests are considered. Scottish governments will be able to promote our priorities in a system based on consensus and alliance building, where Scotland's votes will bring direct influence with the Commission and within the Council of Ministers. Being at the top table will transform Scotland's place in Europe.<sup>4</sup>

This would enable Scotland to prioritise its interests and partnerships as well as enhance the legitimacy and accountability of EU legislative and policy processes for Scotland. Indeed, Scotland's EU priorities often diverge from those pushed forward by the UK Permanent Representation (UKREP) in Brussels and tend to be disregarded. Those priorities currently include energy and climate change, agriculture as well as marine environment and fisheries. Environmental policies are a salient example of the lack of representation that Scotland suffers and the difficulties that it encounters in attempting to further its own interests<sup>5</sup>. Although the Scottish Parliament has important powers in terms of environmental policies, the permeability of that field's boundaries often means that the Scottish Government has to abandon certain projects because of the cross references between environmental issues and matters reserved to Westminster. The Scottish Parliament has large legislative competences in terms of transport, planning, heritage and the environment, including environmental protection, matters relating to air, land and water pollution and policies designed to promote sustainable development within the international commitments agreed by the UK. But in fact, the majority of international agreements are signed by British representation groups that do not necessarily include representatives from Scotland. Scottish representatives are sometimes invited to join the British representation groups as advisors or observers but Scotland cannot send its own representation groups to defend its own opinions, policies or interests outside of any UK-wide concerns.

This issue becomes particularly sensitive when European environmental policies are concerned. Indeed, since European legislation takes precedence over British—and

Scottish—legislation, Scottish policies in terms of fishing and fish farming, marine conservation, agriculture, forestry, rural development, animal health, biodiversity, waste and recycling, drinking water, pollution and climate change, for instance, are determined for the most part by decisions made in Brussels. Although section 53(2)(a) of the Scotland Act 1998 effectively transferred the responsibility concerning the application of European policies to the Scottish devolved administration, foreign affairs—and therefore the right to participate in the European legislative process—remain part of Westminster’s remit. Similarly, if the cooperation principles underlying the relations between the British and Scottish governments are clearly stated in the Memorandum of Understanding and Concordats, the latter have no legally binding value and, in the end, the decision to invite a Scottish Government representative to observe or speak at a European Council meeting belongs entirely to the British minister concerned. Indeed, the viewpoint presented by the United Kingdom Permanent Representation at European Council meetings must be representative of the United Kingdom as a whole and of the British Government. So even though concordats include certain mechanisms allowing for the preliminary contribution of Scottish ministers to the British policy adopted, the interests that the latter defend often fall victim to negotiations with other European states on the basis of priorities that do not necessarily correspond to those of Scotland. These drawbacks, linked to the very nature of the new British post-devolution constitutional setup, are thus consistently denounced by the Scottish government in order to fuel the independence debate in Scotland:

As the government of an independent country, the primary purpose of our international engagement would be the promotion and protection of Scotland’s national interests. Currently these can only be a part of the UK’s considerations and Westminster’s policies will rarely be fully aligned with what is right for Scotland.<sup>6</sup>

Concerns over fishing and fish farming are often raised by the Scottish Government to stress Scotland’s lack of representation at the EU negotiation table in Brussels. Scotland is one of the most important sea fishing nations in Europe as it represents approximately 66% of the total UK volume of fish and is the largest European producer of farmed Atlantic salmon. Facts that the Scottish Government will stress as it repeatedly demands that Scotland should be allowed to lead any European negotiations concerning fishing and fish farming on behalf of the UK, denouncing the unfairness of the current system that

“remains an impediment to the successful achievement of wider goals”<sup>7</sup>. In fact, the European Union has adopted certain mechanisms allowing a region, such as Flanders in Belgium for example, to represent a member-state in such circumstances, yet this has not been the case for Scotland. The Scottish Government thus scorns Westminster’s attitude concerning European affairs:

In 40 years of UK and Scottish membership of the EU, Scotland has not had direct representation at Europe’s top table, and the price has been paid by important Scottish industries, including our fishing and agriculture sectors. On these issues, Westminster’s approach has too often been to the detriment of Scottish jobs and prosperity.<sup>8</sup>

Another environmental sticking point between Westminster and Edinburgh concerns the European Common Agricultural Policy. In a speech in Edinburgh in January 2014, Scottish Finance Minister Nicola Sturgeon claimed that Scotland would have received £850 million in CAP funding, which in turn would have supported an extra 2,500 jobs, had Scotland been an independent EU member-state. She also claimed that CAP funding would increase economic output by £1 billion from 2014 to 2020 and that Scotland had been short-changed by decisions at Westminster<sup>9</sup>. Although the figures brought forward by Nicola Sturgeon may vary, CAP benefits do represent a major asset of full EU membership for an independent Scotland. Indeed, both the Scottish and British governments diverge fundamentally over the CAP as the latter wishes to phase out the First Pillar of the CAP, which regards income support for farmers delivered through the Single Farm Payment as well as actions to intervene in markets for certain products. The British government supports the development of the Second Pillar of the CAP instead, which consists of rural development programmes. The Scottish Government on the other hand is opposed to its British counterpart’s reform project of the First Pillar as it fears the negative impact it would have on the Scottish agricultural economy. Indeed, 85% of Scottish soil falls under the EU’s “less favoured” agricultural land category with a lower profitability than better quality land and therefore liable to be selected for European aid programmes included in the First Pillar of the CAP. It is worth stressing that the proportion of “less favoured” land is of 80% in Wales, 40% in Northern Ireland and only 17% in England<sup>10</sup>, thus inevitably creates conflicting interests between the UK nations over European agricultural policies. However, were it to reapply for membership, Scotland’s positive approach to the CAP, if it



were independent, could play in its favour in obtaining the support of like-minded Member States.

### *The Legal Debate over Independent EU Membership for Scotland*

Indeed, there has been little debate among nationalists about whether Scotland should seek to retain its EU membership or not following a positive vote at the September 2014 independence referendum. Neither members of the SNP nor even of the anti-liberal Radical Independence Campaign have raised the possibility of an independent Scotland outside of the EU. There has been an overwhelming consensus among nationalists to campaign on the basis that an independent Scotland would benefit from a stronger voice in the EU. Indeed, although the Scottish government painstakingly presents the advantages of EU membership for Scotland in its White Paper, the benefits of Scotland's EU membership are neither questioned by the SNP nor the Scottish political class in general, which overwhelmingly supports it in its vast majority and shows little sign of the virulent kind of Euroscepticism encountered south of the border<sup>11</sup>. The Scottish population in general, however, shows much less enthusiasm than its political representatives at the Scottish Parliament, as a December 2013 YouGov opinion poll for the *Sun* suggests: 48% of respondents in Scotland answered that they would vote for Britain to remain a member of the European Union if there were a referendum on Britain's membership whilst 33% said they would vote for Britain to leave the European Union. This compares favourably, however, with results for England and Wales: with 31% declaring they would vote for Britain to remain in the EU and 51% for Britain to leave the EU in the Midlands and Wales, as well as 36% and 43% for the South-East of England<sup>12</sup>. Yet, the main concern over Europe in the independence debate has not been whether Scotland would want to retain its EU membership if it were to become independent but whether it would retain it automatically or would have to reapply for it. Will Scotland have to renegotiate its EU membership? Will its EU membership be subjected to a vote in Brussels? Will the current European foundation treaties have to be amended to provide for this new situation or can the current treaties be interpreted in such a way as to let Scotland retain its EU membership after obtaining its independence from the rest of the UK?

In fact there is little certainty in answering these questions as the current European foundation treaties do not include information on the option of an EU internal enlargement process, meaning the possibility of enlarging the EU by including a member state originating from another EU member-state. The history of European Union membership provides little information either: the cases of Greenland – which opted out of the EU in 1985 but remains part of Denmark (an EU member-state) – and East Germany – which became a member in 1990 after its reunification with West Germany – have little bearing on the current situation in the UK. The issue has thus led to much speculation on the part of different UK and EU political actors during the independence referendum campaign and raised the possibility of as many different post-independence scenarios. Yet, the pragmatic approach historically adopted by the EU towards the geopolitical developments within Europe and its positive enlargement policies in recent years should give much hope to those who wish a smooth transition towards full EU membership for an independent Scotland, in spite of the catastrophe scenarios brought forward by certain political figures in the UK and abroad.

According to the positive approach to the issue adopted by nationalists in Scotland, if the country were to separate from the rest of the UK, both the newly independent Scottish state and the new *rUK* would legally be considered as the succeeding states of the current United Kingdom and therefore rightfully remain members of the EU without having to reapply for membership or renegotiate any of the exemptions from which the UK currently benefits. The SNP relies on the expertise of figures such as Professor Sir David Edward, a former judge at the European Court of Justice (ECJ) from 1992 to 2004, who believes that Scotland and the rest of the UK would be in comparable positions in the event of Scottish independence.

Sir David Edward does however believe that continued EU membership would not be automatic but would be subjected to negotiation for both Scotland and the *rUK*. This period of negotiation would require a period of time of an indefinite length as all parties would need to agree to the terms of negotiation which involve “a whole unravelling of a highly complex skein of budgetary, legal, political, financial, commercial and personal relationships, liabilities and obligations”<sup>13</sup>. According to the former ECJ judge, these liabilities and obligations have become reciprocal, as Scots have acquired rights of citizenship and free movement of goods, persons, services and capital in relation to the EU

whilst the nationals of other EU member states have acquired the same in relation to Scotland, its territory, institutions and people. The nationals concerned are for example investors in the corporate sector, Erasmus students, migrant workers or European fishermen operating in Scottish waters, to quote but a few. According to Sir David Edward, the reciprocal interests and relationships of Scotland and other EU member states necessarily imply that a round of negotiations will take place. Negotiations would be led by the UK as the existing member-state until the moment of separation. Subsequently, there would be no need for a new accession treaty but existing treaties would be amended instead. He concludes:

In short, in so far as we are entitled to look for legal certainty, all that is certain is that EU law would require all parties to negotiate in good faith and in a spirit of cooperation before separation took place. The results of such negotiation are hardly, if at all, a matter of law<sup>14</sup>.

It is precisely this pragmatic approach which the SNP has wished to stress during its campaign as it has often pointed out that Scotland has been a member of the European Union for forty years<sup>15</sup> and that it would consequently be absurd to consider that it would simply be thrown out of the EU and would have to wait at the end of a long EU membership application queue, as has been suggested by certain unionist figures as well as political actors abroad such as José Manuel Barroso, president of the European Commission. The SNP has also underlined the many economic assets that Scotland represents for the EU as well as the many economic, commercial or financial ties and relationships which Scotland has built up over the years with other EU Member States. Scottish Finance Minister Nicola Sturgeon has finally reminded voters that: “the EU is not in the business of throwing out its citizens, of ignoring democratic processes, of reducing cooperation and cutting the size of the EU”<sup>16</sup>.

In its White Paper on independence, *Scotland's Future*<sup>17</sup>, the SNP thus suggests that following independence, the Scottish Government would immediately seek to start negotiations with the Westminster Government, EU Member States and EU institutions. The negotiations would take place during the interim period during which Scotland would still remain part of the UK and of the EU in order to ensure a seamless transition to full EU membership. The Scottish Government has proposed an eighteen-month period

between the referendum and independence, which it deems to represent sufficient time for the negotiations concerning its EU membership to take place. It also believes that an independent Scotland's transition to full EU membership should be facilitated by the use of article 48 of the Treaties of the European Union which allows them to be amended by a simple majority vote at the European Council after consulting with the European Parliament and the European Commission.

However, the British Government and the unionist campaign in general have opposed the nationalists with a very different interpretation of what could be the outcome of a positive vote at the referendum. According to the scenario put forward by the unionists, Scotland's independence would not simply represent a separation between Scotland and the *rUK* but the secession of Scotland from the UK. This implies that the *rUK* would be the 'continuing state'<sup>18</sup> and would therefore inherit its international rights and obligations as well as its EU exemptions, such as the opt-out of the eurozone and the Schengen agreement, as well as its level of contribution to the European budget or even its rebate. Proponents of this scenario will invoke the case of Russia, which was considered by the international community as the sole 'continuing state' of the former USSR after its break-up and allotted the former Soviet state's seat at the UN Security Council; or of Ireland, after which the UK was considered as the only 'continuing state'. This would mean that an independent Scotland would need to reapply for European Union membership as well as for membership of many other international organisations of which the United Kingdom is currently a member, such as NATO, the IMF, the G8 and G20. Nor would it benefit from all the current UK's exemptions if it were to succeed in its EU membership application.

In its analysis document on the implications of independence for Scotland and the UK published in February 2013<sup>19</sup>, the British Government relies on the analysis of two international law experts, Professors James Crawford and Alan Boyle, of the University of Edinburgh, to suggest that an independent Scotland would have to comply to article 49 of the Treaty of the European Union according to which "new states need to apply for membership, obtain unanimous support of the European Council for this request and have membership approved through an accession treaty, ratified by the parliaments of all the Member States"<sup>20</sup>. This means that there would be no automaticity or seamless transition of Scotland's EU membership and that Scotland, as a new state, would have to

apply for membership. Importantly, its application would have to be approved by the European Council and all EU Member States, some of which may wish to set an example to other regional separatist movements, such as that of Catalonia for example, by refusing to ratify an accession treaty for Scotland.

In this view, the British Government's position on the international implications of independence for Scotland, has benefited from the support of key political actors abroad. Both José Manuel Barroso, and Herman Van Rompuy<sup>21</sup>, current president of the European Council, have publicly warned that European treaties would cease to apply to Scotland if it were to become independent and that only the *rUK*, as 'continuing state' of the United Kingdom, signatory of the European treaties, would remain member of the EU. Only minor adjustments concerning the size of the UK's representation would have to be made. Meanwhile, Scotland would have to apply for membership according to the principles set out in article 49, which not only represents a rather long process but would also expose it to the risk of seeing its membership application vetoed, as mentioned previously. José Manuel Barroso warned in February 2014 during a televised BBC Andrew Marr show that "it would be extremely difficult to get the approval of all the Member States to have a new member coming from one Member State". Yet, Barroso's reference to Spain's refusal to recognise Kosovo and his parallel between the latter and a newly independent Scotland were soon rebuffed by both nationalists and political commentators<sup>22</sup> citing in turn the right of all nations to self-determination as well as the many differences between Scotland and Kosovo in terms of economic or human rights records, and historic links with the European Union. Furthermore, Spain's foreign affairs ministers, José Manuel García-Margallo, declared in an interview to the *Financial Times* in February 2014 that Spain had no intention of interfering with Scotland's membership application to the EU if it were to become independent<sup>23</sup>. Yet, Spanish Prime Minister Mariano Rajoy stated in November 2013 that Scotland would have to reapply for EU membership if it were to become independent<sup>24</sup>. Although Spain would find it difficult to veto an independent Scotland's application for EU membership after a majority of its electorate had approved its independence in a legal and democratic referendum, it may well ensure that negotiations are made more difficult for the new European state.

These negotiations would prove to be crucial in economic terms to a new Scottish state, especially in its first few years of existence as it would seek to establish a budgetary

balance and a stable economy. Yet, if either article 49 were to be used in the case of a new independent Scottish state applying for EU membership or if the nationalists' optimistic scenario of an 18 months round of negotiations with the European Council and all EU Member States were to be pursued, it is doubtful whether the Scottish Government would be able to retain the exemptions from which it now benefits as part of the UK. Would Scotland manage to remain outside of two major EU pillars, the Eurozone and the Schengen area, as a full EU Member State? Would it keep its share of the rebate negotiated by former British Prime Minister Margaret Thatcher? It would appear difficult for an independent Scotland to continue to benefit from a share of the British rebate, which is currently worth £3.8 billion a year<sup>25</sup>, as Scotland is part of the wealthier nations in the EU and benefits from many of the European regional programmes and the CAP. The unionist campaign has thus repeatedly stressed that Scotland would suffer a net loss of £1100 per couple between 2014 and 2020 if it were to become independent and subsequently lose its share of the British rebate<sup>26</sup>.

However, the weight of the unionist parties' arguments concerning the benefits that Scotland would lose if it were to become independent and have to reapply for European Union membership are counterbalanced by the UK Government's Euroscepticism and the rise of UKIP at the May 2014 European elections in England. In trying to vie with UKIP's rising electoral success and cater to the most Eurosceptic elements of his party in order to maintain its unity, Conservative Prime Minister David Cameron has stressed his party's Euroscepticism and even pledged to hold a referendum in 2017 on Britain's EU membership if he were to be reelected in 2015. If this referendum were indeed to be held, Scotland would most likely be outvoted by an increasingly Eurosceptic English electorate. Although this argument has been used repeatedly by the nationalists during the referendum campaign as a proof that Scotland should put an end to its union with England, Scotland may well be forced to leave the EU in 2017 if there were to be a majority vote in England against Britain's membership of the EU.

The only risk to Scotland's continuing membership of the EU is the in/out referendum that the Prime Minister has pledged to hold in 2017. [...] It is perfectly possible that a majority of people in Scotland would vote to stay in the EU but that a majority elsewhere in the UK would vote to come out.<sup>27</sup>

If this were the case, the nationalists' argument that it is Scotland's continued union with England rather than independence which puts its European membership at risk may be a bitter pill for pro-European Scottish No voters. This aspect of the debate was somewhat successfully drowned out by the persistent attacks of the Better Together campaign on the EU membership procedure of an independent Scotland as well as the currency issue and the wider economic debate. However, the risks of an anti-European backlash in England may become the new rallying cry of supporters of Scotland's independence and give the SNP a new breath of life after its defeat in the 2014 referendum and the subsequent resignation of its leader Alex Salmond. Nicola Sturgeon, the new leader of the SNP and Scotland's First Minister, wasted little time in seizing the issue to relaunch the Scottish independence debate. She proposed on 29<sup>th</sup> October 2014 an amendment to any bill that a victorious Conservative government should introduce after the next general election of 2015 to allow the organisation of a referendum on the UK's EU membership. The amendment would require that each of the four UK nations should have a veto over UK withdrawal from the European Union.

The objective of this proposal is threefold: the first consists naturally in defending the interests of Scotland and avoiding the likely scenario according to which Scotland could be forced to leave the EU against its will. Indeed, a recent study led by Durham University and the University of East Anglia published on 23<sup>th</sup> October 2014 showed that contrary to England where a vast majority of Westminster constituencies would vote in favour of leaving the EU, only 4 out of Scotland's 59 constituencies would vote similarly in an in/out referendum on EU membership. This appears to confirm Alex Salmond's claims that Scots are more pro-Europe than voters south of the border and suggests that the risks entailed by an in/out referendum for Scotland will no doubt dominate the Scottish political debate for the next few years. The second objective of Nicola Sturgeon's proposal is that the SNP will thus be able to continue presenting itself as the only big Scottish party with no UK counterpart whose sole objective is to defend Scottish interests, an electoral strategy which has proved particularly successful for the party for the last decade. Nicola Sturgeon will be able to pose as a more effective defender of Scotland's interests than the current leader of the Labour party, Ed Miliband, and benefit politically from any opposition to her amendment by UK parties. Finally, Nicola Sturgeon's proposal goes beyond the issue of Europe as it raises the spectre of a federal solution to the UK's

increasingly divisive questions over national sovereignty. The model she proposes is indeed similar to that used for constitutional change in federal countries such as Canada and Australia. Her proposal thus poses the question of the nature of the British state and the terms according to which the constituent nations of the UK should be treated and respected in a continuing union. It remains to be seen whether the federal stance that the SNP's new leader appears to suggest indicates that federalism may be yet another stepping stone towards the party's goal of an independent Scotland in Europe.

## Notes

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- <sup>1</sup> Scottish Government, *Scotland's Future. Your Guide to an Independent Scotland*, Edinburgh, 2013, p. 209.
- <sup>2</sup> Scottish Government, *Scotland in the European Union*, Edinburgh, 2013, p. 5.
- <sup>3</sup> HM Government, *Scotland Analysis: Fiscal Policy and Sustainability*, Cm 8854, London: The Stationery Office, 2014.
- <sup>4</sup> *Scotland's Future*, p. 212.
- <sup>5</sup> Simpkins, Fiona, "The SNP's environmental policies: a visionary economic project for an independent Scotland or a 'green utopia'?" in Leydier Gilles & Martin Alexia. *Environmental Issues in Political Discourse in Britain and Ireland*, Cambridge: Cambridge Scholars Publishing, 2013, pp. 138-156.
- <sup>6</sup> *Scotland's Future*, p. 209.
- <sup>7</sup> Scottish Government, *Rural Affairs, Environment and Climate Change, Taking Forward Our National Conversation, Choosing Scotland's Future*, 2009, p.11.
- <sup>8</sup> *Scotland's Future*, p. 210.
- <sup>9</sup> Whitaker, Andrew, "Scottish Independence: EU Financial Benefit Outlined", *The Scotsman*, 16<sup>th</sup> January 2014.
- <sup>10</sup> Department of Agriculture and Rural Development, Review of Support Arrangements for Less Favoured Areas in Northern Ireland, Consultation Report, Chapter 3, March 2009. <http://www.dardni.gov.uk/consultations-full-report>
- <sup>11</sup> *Scotland's Future*, p. 219.
- <sup>12</sup> YouGov/The Sun Survey Results, [yougov.co.uk](http://yougov.co.uk)
- <sup>13</sup> <http://www.scottishconstitutionalfutures.org/OpinionandAnalysis/ViewBlogPost/tabid/1767/articleType/ArticleView/articleId/852/David-Edward-Scotland-and-the-European-Union.aspx>
- <sup>14</sup> *Ibid.*
- <sup>15</sup> Simons, Ned, "Blocking Scotland's EU Membership Would Be An 'Affront To Democracy', Says Nicola Sturgeon", *Huffington Post*, 19<sup>th</sup> February 2014. "Scotland has been in the EU for 40 years, we have complied with EU law for 40 years, we have contributed to the EU for 40 years".
- <sup>16</sup> Whitaker, Andrew, "Scottish Independence: EU Financial Benefit Outlined", *op. cit.*
- <sup>17</sup> Scottish Government, *Scotland's Future*, *op. cit.*, p. 220.
- <sup>18</sup> HM Government, *Scotland Analysis: Devolution and the Implications of Scottish Independence*, Cm 8554, London, The Stationery Office, 2013, p.33-34 "the remainder of the UK is the continuing state and would exercise the existing UK's international rights and obligations, and Scotland becomes a successor state"; "Continuing states [...] do not have to renegotiate existing treaties or reapply for membership of international organizations. By contrast, where a successor state is established this gives rise to a host of legal questions about the conditions of succession".



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<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.* p. 50

<sup>21</sup> Gardham, Magnus, "Van Rompuy Torpedoes SNP Claims On EU Membership", *The Herald*, 14<sup>th</sup> December 2014.

<sup>22</sup> Palmer, John, "Barroso's Remarks On Scottish Independence Are As Ludicrous As His Record In Office", *Guardian*, 17<sup>th</sup> February 2014; Wintour Patrick, "Scotland Could Join EU 18 Months After Independence Vote, Says Sturgeon", *Guardian*, 17<sup>th</sup> February 2014;

<http://iainmacwhirter.wordpress.com/2014/02/17/no-way-jose-scotland-is-not-kosovo> : "But Kosovo is not in the European Union and has not even applied to join. [...] Scotland fulfils all the Copenhagen criteria for membership of the EU - by definition because Scotland already is in the EU. Scotland has been part of the European Union since its creation in 1993 and has been subject to European law for over forty years. There is no precedent for a country being expelled from the EU, and the mere suggestion is contrary to the founding principle on which Europe is based: the right of all nations to self-determination. [...] Former communist countries like Bulgaria have recently been welcomed into the EU fold despite having serious economic problems and profound human rights issues, including recognized breaches of the European Convention. But not Scotland whose Parliament incorporated the ECHR into its very constitution. It took a nanosecond for the EU to recognise the existence of countries like Latvia when they broke from Russian domination. Yet we are to believe that one of the oldest countries in Europe is to be blackballed".

<sup>23</sup> Buck, Tobias and Dickie, Mure, "Spain Promises Non-Interference on Scotland", *Financial Times*, 2<sup>nd</sup> February 2014.

<sup>24</sup> Peterkin, Tom, "Scottish Independence: Spanish Blow to EU Vision", *The Scotsman*, 28<sup>th</sup> November 2013.

<sup>25</sup> European Commission, *EU Budget 2012 Financial Report*, 14<sup>th</sup> December 2013.

<sup>26</sup> HM Government, *Scotland Analysis: EU and International Issues*, London: Stationery Office, January 2014, p.8.

<sup>27</sup> Nicola Sturgeon in: Whitaker, Andrew, "Scottish Independence: EU Financial Benefit Outlined", *op. cit.*