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NOTES ON THE SCOTTISH ISSUE

Berenberg Macro Flash

Eight days ago, 62% of Scots voted to stay in the EU. Scotland's regional government now wants to secure its nation's place in the EU. Without wanting to take any side in the argument or making any forecast on the potential outcome of the Scottish independence debate, let me offer some observations from an EU-27 angle.

For the EU-27, the UK will remain an important friend, neighbour and partner. While holding the UK to the rulebook to which the UK itself subscribed by ratifying the Lisbon treaty („you must file for divorce before we negotiate the post-divorce settlement') the EU-27 have no interest in exacerbating the existing tensions within the UK in any way. For the time being, expect the EU-27 to consider the Scottish issue as an internal affair of the UK. The EU-27 have enough issues to ponder and are not looking for new complications.

Does that mean that an independent Scotland could not become an EU member, or only after a long period where it would have to be outside the EU and its common market first? Not necessarily. According to Article 49 of the Lisbon treaty, “any European state which respects the values (of the EU)... may apply to become a member of the Union.” An independent Scotland would be eligible. Joining the EU is usually a multi-year process during which the applicant country has to bring its laws and regulations in line with those of the EU. In the case of Scotland, that could potentially be put on a fast track. Because Scotland is already subject to the full EU “acquis communautaire”, it would only have to preserve that status. The agreement to do so could be struck fast. Of course, some issues need to be genuinely negotiated: would Scotland keep all the UK opt-outs including that from the euro and the UK's special budget rebate? But with some political good will, agreement on these issues could be technically easy and swift.

The snag for Scotland is different: as long as it is part of the UK, the EU cannot negotiate with Scotland's regional government, let alone conclude and ratify any agreement. The UK represents Scotland in the European Council where the real power resides within the EU. Of course, the EU cannot strike a deal with Scotland's regional government on potential future EU membership before Scotland (and the UK) then decide whether or not Scotland will actually be independent in the future.

For Scotland to become an independent country within the EU, it has to sort out its relationship with the UK first. As a hypothetical scenario, suppose that Scotland and London agree that Scotland will be formally independent at some date in the future after a hypothetical second Scottish independence referendum. Following such an agreement within the UK, a Scottish subset of the UK's Brexit negotiating team could discuss under which terms EU rules would continue to apply to Scotland even if they cease to apply to the UK upon formal Brexit. According to UK law, the Scottish parliament has the authority to implement EU law in Scotland already. That may help. Part of the future divorce agreement between the UK and the EU under Article 50 of the Lisbon treaty could be that Scotland stays in the Common Market, ideally with the formal day of Scottish independence from the UK no later than the day of UK departure from the EU. The terms of potential Scottish accession to the EU could also be prepared during such talks during which the UK formally still represents Scotland.

Europe can be creative. For instance, the formal process of an independent Scotland applying for EU membership and all sides ratifying an accession agreement prepared in advance could be swift. In the meantime, the EU could transitionally keep a post-independence Scotland fully in the Common Market



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until the accession agreement is formally activated even if the remainder of the UK were to lose some rights of market access beforehand. During such a potential transition period, an independent Scotland may not yet be a full EU member with voting rights, though.

The need for Scotland to sort out its relationship with the UK first before it could approach the EU could also help to deal with potential objections from other EU members against Scottish membership. Like the UK, Spain (Catalonia, Basque country), France (Corse) and Italy (Alto Adige) have regions governed by regional parties. As Spain's PM Rajoy just made clear once again, he is no fan of Scottish independence. This is another reason for the EU to not encourage Scottish independence in any way. However, if Scotland and London had already agreed that Scotland will be an independent country at some date in the future and will thus become eligible for EU membership, the calculus could be different. From an EU perspective, continued Scottish membership after Brexit would also be different from, say, the ambitions of the Catalan regional government to secede from Spain but stay in the EU. Seen from the UK, it would be Scotland that's leaving. But seen from the EU, it would be the UK that is leaving (the EU) and Scotland that is staying.

Could Spain or other countries veto Scottish EU membership because they do not want to encourage their own separatists by admitting a country that used to be part of a larger country before? Theoretically yes. But after Scotland had become an independent country, or after Scotland and the UK had already agreed that Scotland will be an independent country, such a position would be difficult to maintain. After all, many EU members (Czech Republic, Slovakia, Estonia, Latvia, Lithuania, Slovenia and Croatia) were parts of larger countries some time before they joined the EU.

Again, I do not want to take any side in the arguments about Scotland. I merely present what I consider as potentially possible and impossible seen from an EU-27 angle for a hypothetical case in which Scotland and London had already agreed that Scotland would be independent at some time in the future. Of course, we are in uncharted territory. My best guess is that Scotland could potentially remain in the Common Market instead of having to leave it first as part of the UK before re-entering it as an independent country much later. But a Scottish first minister will not be able to campaign for independence with an EU accession agreement in her handbag already. She would have to sort out the Scottish issue with London first before the EU could come into play.

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