

THE EUROPEAN UNION, THE NATIONS AND THE REGIONS

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The UK's relationship with the European Union (EU) is generally seen through a lens focused on what UK central government in Westminster and Whitehall says and does. But there is also a territorial dimension to the UK's relationship with the EU. EU policy matters are in many cases ones in which devolved governments have clear interests and roles; and devolved governments have generally been more positive about European integration than UK central government. The effectiveness with which devolved governments can make their views and interests count in EU policy is therefore a significant issue beyond Westminster and Whitehall. So, by extension, are changes to the UK's terms of membership of the EU, such as those negotiated by Prime Minister David Cameron in the run-up to the EU Referendum campaign. So also would be a UK decision to exit the EU in the Referendum. A potential Brexit has particular and ironic resonances in Scotland given the profile of the EU issue in the Scottish independence debate in 2014. At that time the view of the UK Government – which has now opened up the option of Brexit to the UK's voters – was that Scotland's membership of the EU could only be secured by remaining in the UK. Now, by contrast, a Brexit vote would be seen by many independence supporters as a trigger for a second independence referendum.

This paper explores this territorial dimension to the UK's relationship with the EU. It begins by looking at (and assessing the effectiveness of) the ways in which devolved governments, both in the UK and elsewhere, have sought to influence EU decision-making. It moves on to discuss the ways in which sub-state nationalist parties like the SNP have understood the interaction of their ambitions either for autonomy within a member state or full independence with the European

integration process. It ends with an analysis of the different scenarios that might face Scottish and other devolved governments following the EU Referendum on 23 June.

Influencing the EU

EU member states with powerful tiers of devolved or regional government – the UK, Germany, Austria, Belgium, Spain and Italy in particular – face additional complexities in engaging with EU decision-making. These have grown over time as the scope of powers held at EU level has widened, but also as domestic reform processes have expanded the scope of devolved decision-making. Many of the powers that member states have transferred to the EU level are powers allocated to devolved governments under domestic constitutional law. So for example while domestic constitutions typically allocate powers in agriculture to devolved governments, the Common Agricultural Policy means that many of those powers have been transferred to the EU. The same is true of other areas in which devolved governments have responsibility at home, including regional economic policy, many aspects of environmental policy, cultural policy and in some places – like Scotland – also criminal justice. Yet at the EU level it is the central governments of the member states that have the powerful, institutionalised roles in EU decision-making on such matters. So the effect has been an indirect transfer of powers from devolved to central governments as a consequence of European integration, and that effect has grown as increases in both EU and devolved powers have created a longer list of policy matters notionally held by devolved governments at home but now exercised by EU institutions.

For that reason, and especially as the scope of European integration widened from the mid-1980s, devolved governments have demanded a stronger voice in EU decision-making. They have sought that voice in two main ways: by establishing arrangements for bringing their concerns into central government decision-making on EU matters; and by developing both formal structures, but also more informal lobbying mechanisms, to gain influence directly in Brussels. For a time through the 1980s and 1990s the latter route to influence was also associated with campaign for a 'Europe of the regions' aimed at opening up a 'third', regional level of the EU's organisational structure. Although the precise vision of a Europe of the regions was always elusive, the ambition was to achieve a significant constitutional status in EU matters for regional governments across the EU. One outcome of this campaign was the establishment of the EU Committee of the Regions (CoR) in the early 1990s. CoR convenes representatives of both local and regional government across the EU. It has a limited, advisory role in the EU legislative process and has been hampered from the outset by differences of interest between local authorities and regional governments with a very different constitutional status. Devolved governments have also sought, with limited success, opportunities to influence the periodic negotiations to reform the EU's treaties, including all the main intergovernmental conferences (IGCs) from the Maastricht IGC in 1990-91 and also the Constitutional Convention of 2001-03.

The most fully developed systems for bringing devolved government views into EU decision-making are in Germany and Belgium. Both have highly formalised systems of committees designed to produce shared views between the devolved unit – sixteen Länder in Germany and the territorially overlapping systems of three territorial regions and three language communities in Belgium – and for then coordinating these with the views of the respective central governments. This process involves more or less continuous negotiations at home.

At the same time the regional governments are also active at the EU level. One focus is the CoR, although this was hampered by the fact that the local and devolved government members had different interests and conceptions of their role. Another is lobbying in Brussels. The German Länder run representative offices in Brussels – more or less mini-embassies – which engage with the European Commission, Members of the European Parliament, other regional and devolved governments and the Permanent Representations of their central government in Brussels. Another instrument introduced by the Maastricht Treaty is a provision whereby sub-state governments can participate in the Council of Ministers as part of the national delegation where matters within their competence are at issue. Representing the member state at the Council of Ministers has often been seen as an important prize, but devolved governments only speak for the member state after agreeing a shared position with the central government which they are obliged to pursue. In Germany and Belgium, the regions have a formal role in determining this position but in other cases, including Spain and the UK, the central government has the final word.

It would be difficult to say that these systems have given devolved governments great traction over EU-level decision-making. The process of producing compromise between devolved and central governments, and then engaging that compromise in decision-making at EU level involving 27 other member states and the European Parliament, means that devolved impact at EU level is at best incremental. So in cases where the central government has changed its stance because of devolved government pressure, there is no guarantee that the devolved view will prevail in wider discussion across the EU institutions. These complex, attritional decision-making processes also cause challenges back at home in the devolved parliaments. Much of the process of engagement in EU decision-making is in private negotiation with other devolved governments, with central government, and with devolved and central governments of other EU member states. It is difficult for devolved parliaments to maintain meaningful levels of scrutiny and accountability.

These are challenges also faced by the Scottish and other devolved governments in the UK. Rather than a highly formalised system as in Germany or Belgium the UK has something more like a 'gentleman's agreement' based on good communication flows and goodwill between UK and devolved governments. Arrangements for this are set out in a 'concordat' but have no legal force. A Joint Ministerial Committee meets to exchange and coordinate views among UK and devolved governments on EU matters and has worked smoothly enough, though many of interactions between devolved and UK governments happen on more informal bilateral bases. Devolved ministers have on occasion represented an agreed position for the UK as a whole in the EU Council of Ministers. SNP governments in particular have focused on the right to attend and where possible speak at the Council but the Scottish Government is still obliged to stick to a script agreed with the UK Government and then bound by collective responsibility for whatever outcome emerges from the discussion. Each UK devolved government maintains a representative office in Brussels to promote and support devolved objectives. As with Germany and Belgium, however, there have been relatively few occasions on which UK policy – and the ultimate outcome of EU decision-making – was obviously shaped by a distinctive devolved priority. Devolved parliaments in the UK have also seen problems in holding their governments meaningfully to account.

The EU has a particular resonance in Northern Ireland. EU programmes supporting cross-border cooperation laid some of the foundations for 'north-south' cooperation as the peace process in Northern Ireland progressed in the mid-1990s. The broader commitment to free movement of labour, goods and services also softens the significance of the national border between the UK and Ireland, supporting the 'post-sovereign' features of the Belfast Agreement of 1998. Despite all this the Northern Ireland devolved government has been the least prominent of the UK devolved administrations in EU matters, not least because continuing sensitivities in cross-community relations in Northern Ireland keep the focus of both UK and Irish central governments on ensuring the EU recognises, and contributes to, the challenge of maintaining stability there.

For a time during the Constitutional Convention and for a few years afterwards a grouping of 'Regions with Legislative Power' or RegLeg (including those from Germany, Belgium and the UK) worked collectively to enhance devolved input to EU decision-making. This was a response to the weaknesses of the Committee of the Regions and, more broadly, the failure of the campaign for a Europe of the regions. Initially Scotland under Labour First Minister Jack McConnell was an enthusiastic member of RegLeg as it lobbied for greater recognition of legislative regions at the Convention. Subsequent SNP Scottish Governments since 2007 have been less enthusiastic, seeing their ambition to establish an independent Scottish state as difficult to reconcile with lobbying for 'regional' powers. RegLeg appears now to have fizzled out.

Europe and Sub-State Nationalism

At first sight, sub-state nationalism like that of the Scottish National Party (SNP) might seem incompatible with European integration, the one seeking smaller units and the latter a larger one. Yet this is not necessarily so, particularly as the idea of the nation-state itself is being transformed by global trends and, especially, European integration. Small states are vulnerable economically and militarily and often feel the need for an overarching system of international law and regulation. They also need guarantees of access to larger markets than they can provide domestically. Although between the world wars many of them joined in the dominant protectionist ethos, since the Second World War they have tended to favour freer trade. Even in the late nineteenth century, many of the nationalist movements in central and eastern Europe (and in Ireland) favoured home rule within reformed and democratised imperial systems, conscious of their own vulnerability in the neighbourhood of great powers.

In recent years, the European Union has provided such a framework. Basque and Catalan nationalists were among the strongest supporters of a united Europe from the 1930s and have continued to be so. Irish moderate nationalists (the SDLP) are strongly pro-Europe. The SNP had an interest in Europe in the 1950s but by the 1970s had turned against, although the pro-European wing remained as a minority. In the mid-1980s they changed their position again, to independence-in-Europe.

There are two distinct conceptions of Europe among minority nationalists. For the SNP, Europe lowers the cost of becoming independent and it has tended to favour an intergovernmental Europe of the nation states. Other parties, including Plaid Cymru, Convergència i Unió (CiU) (now being refounded as a pro-independence party) and most of the Basque Nationalist Party (PNV) have gone beyond the idea of the nation-state altogether, embracing a 'post-sovereignty' doctrine in which sovereignty is shared at multiple levels in a new model of the state. Such doctrines often have traction in places where traditional models of state sovereignty have long been questioned, including Scotland. A wing of the SNP was long wedded to the idea, whose intellectual basis was provided by the late Sir Neil MacCormick, even as the official party line was simple independence.

It was this kind of thinking that allowed many nationalists to join forces with the Europe of the Regions campaign. In Scotland, the campaign attracted more support from the Labour Party, especially under Henry McLeish and Jack McConnell. Not all nationalist movements, however, have embraced Europe. The Italian Lega Nord used to favour independence in Europe and membership of the Euro but has transmuted into a stridently Eurosceptic party appealing to Italy as a whole. Nor have extreme left and right nationalist parties been particularly pro-European. Right-wing Flemish nationalists are not. Sinn Féin has supported the 'no' side in every Irish European referendum although it has come out in favour of the 'remain' option in the forthcoming European Referendum.

The failure of the Europe of the Regions campaign challenged the European strategy of sub-state nationalists in the EU. This, along with failures of efforts to find a 'third way' between independence and union (through varieties of what in the UK is called devolution-max), led some movements back to supporting full independence. Convergència (now divorced from the non-separatist Unió) moved towards Catalan independence. The New Flemish Alliance (NVA) became the largest party in Flanders, offering a more unequivocal nationalism than the post-sovereigntist Flemish Christian Democrats.

The SNP of course had the opportunity to stage an independence referendum in 2014. Part of its prospectus was continuation of membership of the EU as Scotland transitioned from a devolved part of the UK to independent state. Plaid Cymru came out in favour of full national status, although the meaning of this remained rather unclear. All of these cases, however, still relied on an overarching European framework and often on a continued link to the old state. As former First Minister Alex Salmond famously claimed, shared membership of the EU was one of the dimensions of union Scotland would continue to share with the rest of the UK after independence – amid an expectation that the rest of the UK would be supportive in securing good terms for independent Scotland's membership. The PNV, for its part, has moved away from independence and is now seeking a new accommodation with Spain, with a strong European dimension.

Post-referendum scenarios

The SNP's ambition of Scottish independence has long been interconnected with the question of EU membership. The aspiration of 'independence in Europe' was adopted in the late 1980s as a framework for avoiding the potential costs to Scotland of dislocation from a shared economic area with the rest of the UK; if both an independent Scotland and the rest of the UK were part of the EU, both would be bound by the terms of EU membership. Trade and free movement would continue unhindered. This vision of independence amid continuity was put to the test in the debate surrounding the 2014 Scottish independence referendum. The pro-independence campaign argued that an independent Scotland would maintain its EU membership in the event of a Yes vote. The UK Government and a number of voices elsewhere in the EU, notably in Spain, suggested that EU Scottish membership would not be automatic, and that the safer choice to guarantee EU membership was to vote to remain in the UK.

That issue was not resolved and became moot when Scotland voted No. However it resurfaced with a twist with the UK's Referendum on membership of the EU. If the Leave side had its way Scotland would, with the rest of the UK, leave the EU. This prospect was raised by the Scottish First Minister Nicola Sturgeon on a number of occasions as signalling 'material change' in the constitutional situation confirmed by the 2014 referendum result and opening up a rationale for a second independence referendum. Sturgeon's signal took on particular resonance given the differences in views on EU membership in different parts of the UK. In most opinion polls England appears split down the middle on the EU referendum questions, as does Wales. Scotland appears strongly in favour of remaining in the EU while in Northern Ireland a smaller but persistent tendency to vote Remain conceals a big difference between the communities, with nationalists overwhelmingly for Remain and unionists divided. All the parties represented in the Scottish Parliament favour Remain. Wales is more divided, with a UKIP presence in the new National Assembly and a significant Conservative Leave tendency. Northern Ireland is divided, with the Democratic Unionist Party in favour of Leave and the other main parties supporting Remain with different degrees of enthusiasm. If England were to swing to a small leave majority, its weight of numbers in the UK could pull a pro-EU Scotland and Northern Ireland out with it.

While such a scenario might produce a clamour for a second Scottish referendum, it is not clear that a Scottish desire to remain in the EU would be enough to swing sufficient voters to give a convincing majority for independence. Recent polls have suggested that the scenario might push support up to the mid-50s, but that is before the difficulties that would arise with a Scotland in the EU and a rest of UK outside have been rehearsed. Some of these difficulties are discussed below. Even if Brexit did give a justification for a new independence push, it would actually undermine the thinking behind the independence-in-Europe policy that has been the

SNP's mainstay for the last thirty years. That was predicated on both the UK and Scotland being within the EU, so allowing common policies on key economic and regulatory matters without a political union, and keeping an open border. The prospect of a hard EU border with England and Scotland would make independence more difficult to sell and force Scots to make an explicit choice between the two unions. The SNP does not therefore see this as an auspicious circumstance for independence.

The UK being out and Scotland in the EU could also threaten the continued ties with the UK that made independence easier to sell in 2014. This includes the currency union and common regulatory frameworks that converted separation into 'independence-lite'. It would also be necessary for Scotland to establish a clearer position of its own with regard to its role in Europe and the degree of integration it wanted. The independence proposals of 2014 envisaged keeping the same opt-outs as the UK currently has, on the Euro, Schengen and Justice and Home Affairs. This would have enabled it to retain elements of the old UK union, including the passport-free border but retaining these links with a non-member state could be much more difficult, especially if European and UK policies started to diverge. It is by no means certain whether other EU states would consent to an independent Scotland maintaining special arrangements inherited from the former UK. In any case the scenario of Scotland in and rest of UK out may have become more unlikely given the result of the May 2016 Scottish Parliament election. Although the SNP increased its vote, it failed to repeat its majority of 2011 and will run a minority government. This may make it more difficult to claim a mandate for a second independence referendum even if we see an overall Brexit vote outweighing a clear Scottish vote to remain.

Were Northern Ireland to vote to remain but be pulled out by England, it would increase tensions, especially if the two communities had voted in different ways. Brexit could also undermine key elements of the political settlement within Northern Ireland. It would imply a hard EU border with the Republic of Ireland, going against the spirit of the Belfast Agreement. Cross-border institutions would find it more difficult to work across an EU/non-EU border. UK and Irish ministers would no longer meet regularly in European forums, a venue that has proved valuable in the past in providing a neutral place for encounters. More generally, European membership has allowed for a dilution of the concept of sovereignty in Ireland, as sovereignty is shared at multiple levels, lowering the stakes in the old battles between Irish unification and UK unionism. Were the nationalist community to have voted heavily in favour of Europe, this could reopen the issue of reunification, although it is unlikely to convince many unionists to change their minds.

UK withdrawal from the EU would not in itself resolve the issue of its relationship with Europe, as there are several options for a revised position in the international trading order. One option is membership of the European Economic Area; another is to go it alone, without a special relationship with Europe. The devolved administrations would likely prefer the former, in line with their preference to keep their European links, but the decision would be for the UK Government to take, presumably without a direct say for the constituent parts. Nor would the devolved governments be likely to have a role in the details of negotiations should the UK opt for a new relationship with Europe outside the EU framework. This outcome could give renewed emphasis to the territorial dividing lines in UK politics especially, but not only, between Edinburgh and London.

A UK vote to remain in Europe would avoid some of these issues but pose others. Were England to vote narrowly to leave, the Scottish and Northern Ireland votes could swing the overall result in favour of remain. We know that there is an alignment of English nationalism with Euroscepticism. English

people who most strongly identify as English tend to be against Europe, compared with those who see themselves as British. English identifiers also suffer from 'devolution-anxiety' especially about the advantageous treatment Scotland is perceived to have in the UK. English opinion has been exercised increasingly over the issue of Scottish MPs voting on English matters. Changes to the standing orders of the House of Commons were introduced in October 2015 to address this by requiring – against the opposition of the SNP – an English majority for new laws applying only in England but this does not fully resolve the grievance. English MPs can block a new law affecting only England, but so can the whole House, including Scottish MPs. There has also been resentment against what is seen as the Scottish advantage in public spending. A grievance over the Scots keeping England in the EU against its will would add to these discontents, further destabilising the union and feeding English nationalism.

A vote to remain in the EU, even if all parts of the UK return a Remain vote, could also return attention to the different views of Europe in the various parts of the United Kingdom. Whatever the outcome of the vote, David Cameron's negotiations appear to have secured what amounts to a permanent opt-out of future moves to more integration in Europe. The UK is destined to be a semi-detached member of the EU, keen on the single market but suspicious of EU action in other fields, including notably migration and the social dimension. The Scottish and Welsh governments, on the other hand, are in favour of a more social Europe and, in Scotland, this extends to almost the entire parliament and likely future governments. The Scottish Government is also in favour of the free movement of labour and a more generous immigration policy as a whole. Scotland, Wales and Northern Ireland have different interests in relation to agriculture and energy. Scotland has a strong interest in oil and gas and a commitment to renewable energy. All of these could put the devolved administrations in opposition to positions taken by the UK in EU negotiations.

The question then arises whether the arrangements in place for bringing devolved priorities into EU decision-making are effective enough to have such differences reflected in policy discussion and policy outcomes. There are already complaints on this score. These could become more acute were the UK Government drawn to respond more to distinctively English (and Eurosceptic) interests. Yet there seems to be little likelihood of any review of substantial arrangements for including the devolved governments, and enhancing their role, in EU policy-making.

Whatever the outcome, the issue of the connection between the UK's relationship with Europe and the internal constitution of the United Kingdom will remain live. None of the devolved governments want Brexit, although the largest party in Northern Ireland has come out in favour of it. Neither Scotland, Wales nor much of the Northern Ireland Assembly share the concerns of the current UK Government that led to the renegotiated relationship on which we will vote on 23 June. The role of the devolved governments within the European Union is an issue that will continue.

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