

## WRITTEN SUBMISSION FROM JAMES KER-LINDSAY

### About the author

James Ker-Lindsay is Senior Research Fellow in the Politics of South East Europe at the European Institute, London School of Economics and Political Science. His research focuses, inter alia, on questions of EU enlargement and on secession and recognition. He is the author or editor of numerous books, including *Kosovo: The Path to Contested Statehood in the Balkans* (I.B.Tauris, 2009), *The Cyprus Problem: What Everyone Needs to Know* (Oxford University Press, 2011) and *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States* (Oxford University Press, 2012).

### Introduction

1. There are a number of questions relating to Scotland's membership of the European Union in the event that it votes for independence in the referendum to be held in September 2014. This paper explores two key elements. In the first part it will examine the likely reaction of the member states, in particular the reaction of the member states that have opposed Kosovo's independence. Secondly, it will examine some aspects of the process of accession.

### The reaction of member states

2. The most important questions that need to be addressed when considering Scotland's likely future relationship with the European Union in the event that it votes for independence is the reaction of the member states to the vote and the likelihood that they will be prepared to admit Scotland into the EU. As will be shown later, the ultimate decision on whether and how to admit Scotland into the European Union will rest with the member states.

3. Thus far few countries have explicitly addressed the issue of Scotland's independence, let alone its path to EU membership. This would largely appear to be due to an extreme reluctance on the part of most member states to become embroiled in what is so obviously a very sensitive and important issue for a Union partner. There is a sense that it would not be correct to air views one way or another. Indeed, it has been noticeable just how little has been said by officials from EU member states about the Scotland independence referendum.

4. Having said this, there would appear to be little reason why the majority of member states would want, or try, to prevent an independent Scotland from joining, or retaining its place within, the EU. As long as the process leading to independence is seen to be democratic and reflects the views and wishes of all relevant actors, and that independence is freely accepted by the rest of the United Kingdom, there would appear to be no reason to suppose that the large majority of the 28 current members of the EU would raise an objection to Scotland's independence or its admission into the European Union.

5. However, questions have been raised about the likely reaction of those countries that face a separatist threat of their own. In particular, attention has been drawn to the five EU members that have not recognised Kosovo's unilateral declaration of independence, in February 2008. It has been suggested that these countries may also stand in the way of an independent Scotland. With the notable exception of Spain, there is little evidence to support this view.

6. In the case of Romania and Slovakia, the decision not to recognise Kosovo was a reflection of complex internal political factors. More recently, both countries appear to be softening their positions. In Romania, the prime minister has made it clear that he now favours recognition; a move that is blocked by the president. Meanwhile, in Slovakia, where a parliamentary resolution prevents formal recognition, Kosovo officials are welcomed into the country. In both cases, there is high likelihood that the conditions will arise for recognition within the next two years. Also, it is important to bear in mind that Slovakia is the product of a consensual split. For these reasons, there is little reason to suspect that either Romania or Slovakia would stand in the way of an independent Scotland within the European Union.

7. Likewise, Greece and Cyprus are extremely unlikely to offer up any opposition to Scotland's independence or EU membership. They too base their reservations on the unilateral nature of Kosovo's secession from Serbia, rather than the principle of independence. Greece has exceptionally cordial relations with Kosovo and recognises it in all but name already. It is expected to recognise Kosovo in the coming year or two. Meanwhile, Nicosia is also moderating its views and officials privately insist that they will not block Kosovo's EU accession course. Having spoken to numerous Cypriot officials they also point out that they have absolutely no objection to the emergence of an independent Scotland as long as this was the result of a democratic and consensual process that was agreed by all parties.

8. At present, the most significant obstacle facing an independent Scotland would appear to be the attitude of the Spanish government. Although it at first seemed that Madrid would not pose a major obstacle to Scotland's independence and membership of the European Union, and ministers deliberately sought to distance the country from suggestions that it would block an independent Scotland, the rising tide of pro-independence sentiment in Catalonia led to a dramatic hardening of Spain's attitudes in the later half of 2013. The Spanish Government now appears to be using Scotland's vote as a chance to send a strong message to Catalonia. To this end, recent statements suggest that the Spanish Government will seek to force Scotland out of the European Union and insist that it reapplies as an external entity. It is hard to say how credible this is. As things stand, it would seem to be a serious threat. Of course, it may also be the case that in the event of a vote in favour of independence, and a positive process of negotiation between Scotland and the rest of the United Kingdom, the Spanish Government may well choose not to obstruct Scotland's membership of the European Union; especially if it appears that it stands alone on the issue and it seems likely that Scotland would have an unimpeded path to full membership of the United Nations.

Instead, it may opt to moderate its opposition and instead focus on the fact that Scotland and Catalonia are historically, legally and politically different cases. But current indications do not seem to point in this direction. For the meanwhile, it would seem that Spain at the moment represents the most formidable obstacle to an independent Scotland acceding to the European Union in a relatively straightforward manner.

9. Notwithstanding the apparent change in Spanish attitudes towards Scottish independence, it is also important to point out that all five of these countries have been willing to accept new states into the international system at various points over the past 20 years. Most recently, in July 2011, they all supported the independence of South Sudan.

### **The Process of Accession**

10. In addition to the broad question of whether or not Scotland would be accepted as an independent state by the members of the European Union, there are also questions about the way in which Scotland's relationship with the European Union would develop in the event of a vote in favour of independence. On the one hand, it has been suggested that Scotland could expect to continue as a member of the European Union with relatively few difficulties. Balanced against this, another view is that Scotland would have to leave the European Union and reapply for membership from outside of the Union. This appears to be the view of a number of senior officials from the European Union, including the current president of the European Commission, Jose Manuel Barroso. However, it is not clear the extent to which this opinion is based on hard and fast legal assessments or represents a more personal opinion. In this latter regard, it is perhaps worth bearing in mind that following European Parliament elections this year, a new Commission will be appointed. This could well see a change of thinking on the question of Scotland's membership of the European Union in the event that there is a vote in favour of independence.

11. Regardless of the reasoning behind the argument that Scotland would have to leave the European Union, it seems implausible that Scotland would have to get in line behind, or even alongside, Turkey and the countries of the Balkans. The fact that Scotland, as part of the United Kingdom, has been operating within the EU for four decades, and that there are questions about the rights of the people of Scotland to retain their status as citizens of the European Union, suggests that an alternative accession process will have to be devised. This would almost certainly be a fast track process.

12. Yet again, the question is whether Scotland would have to leave the Union first or whether it could conduct such a process at the same time as it negotiates independence from the United Kingdom. In truth, there is no clear answer on this question. Here again, much depends on the actual position adopted by the member states, most notably Spain. In the event that Madrid decided to relent, and that there is the necessary political will amongst the current EU members to allow Scotland to negotiate accession alongside independence there is no reason why this could not be done. The European

Union has traditionally proven to be extremely adept at devising innovative ways of handling anomalous situations; as seen in the case of German reunification, the accession of a divided Cyprus and Kosovo's integration process. There seems to be little reason why an entirely new and innovative procedure could not be developed to accommodate Scotland in a parallel process.

13. However, even if a parallel process existed, there may well be a problem as concerns the projected timeline for independence, and presumably membership, which has been set at about eighteen months. While it is not possible to say that this is unrealistic, it is also important to point out that any process of negotiation with the European Union, even under an expedited accession format, would take many months. Any agreement would then have to be put before the national parliaments of the current 28 members for ratification. Going on past experience, just this ratification process could take a considerable period of time. For example, in the case of Croatia, the most recent acceding state, the first state to ratify the accession treaty was Malta, on 1 February 2012. The last was Germany, on 16 May 2013. This represents a gap of over 15 months. Even in the event that a concurrent accession process is put in place, it may be difficult to meet the projected timeframe for independence.

14. Lastly, there may be a potential problem that needs to be considered. During discussions with EU officials about the possibility of Kosovo joining the European Union, it was stated that there is a view amongst EU legal advisors that it would not be possible for a state to join the European Union without being a member of the United Nations. This is because of the European Union's involvement in various multilateral institutions. If this is the case, this could pose a problem for an independent Scotland joining the EU at the moment of independence as it would not be possible to join the UN at the same instant. However, this legal opinion may refer to a situation of long-term contested statehood, as is the case with Kosovo, rather than a situation, such as would presumably exist in the case of Scotland, whereby UN membership could expect to be concluded within days of independence. (South Sudan was admitted to the UN within a week of its declaration of independence.) To this extent, a small delay between EU accession and UN membership may not pose a significant problem. However, it would be an area that should perhaps be investigated in more detail.