

Routes

1. As presented in '*Scotland's Place in Europe*' the Scottish Government believes that the best option for Scotland is to be an independent member of the EU.

[REDACTED – 5 paragraphs]

[REDACTED – 9 pages - out of scope]

[REDACTED] Accession to the EU as an independent Member State

Overview

61. Since 2014, the circumstances defining Scotland's potential EU membership have changed significantly. Brexit means that an independent Scotland is likely to be negotiating entry to the EU from outside the EU, though it may be that the process is quicker than for other countries given that, as part of the UK, Scotland has been an EU member for over 40 years.

62. The Treaty on European Union (TEU) says that any European country may apply for membership of the EU if it respects the democratic values of the EU and is committed to continue promoting them together with other members of the European family. The route to membership is provided for in Article 49:

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.¹

63. In order to be eligible to enter the EU a candidate country must:

- Be a state in its own right within geographical Europe
- Respect and commit to the values set out in Article 2 TEU (**annex 3**)
- Be able to apply EU law and ensure that EU transposed into national legislation is implemented effectively through appropriate administrative and judicial structures, and
- Satisfy the Copenhagen Criteria (1993) as defined by the European Council, notably:
 - a. Political criteria: “stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”. These criteria focus on democracy, separation of powers between the legislature, executive and judiciary, the independence of the judiciary, efficient public administration, protection of human rights and minorities. As such, we can expect an independent Scotland to meet these criteria.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012M049>

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- b. Economic criteria: *“a functioning market economy and the ability to cope with competitive pressure and market forces within the union”*. The criteria focus on a country’s macroeconomic policy; public debt/deficits, diversification of country’s economy, growth, inflation, sustainable and balanced growth, competition in the economy, investment climate and foreign direct investment, unemployment, black market economy and labour force. Further clarification on what these criteria mean in practice will be required, [REDACTED]
- c. The ability to take on the obligations of membership; *“adherence to the aims of political, economic and monetary union, adoption of the EU acquis and the administrative capacity to effectively implement and enforce the EU acquis”*. The criteria focus on a country’s ability to adopt, implement and enforce the rules, standards and policies that make up the body of EU law (the ‘*acquis*’), and adherence to the aims of political, economic and monetary union.

EU accession procedure

Application

- 64. A formal application is lodged with the Council of the EU by the European country fulfilling criteria contained in Art. 2 TEU. The Council of the EU informs the European Parliament, the European Commission and national parliaments of the application. There is no reason to believe that Scotland, as a current member of the EU through the UK, would not continue to meet the conditions of Article 2 TEU.

Candidate status

- 65. A country's status as a candidate country is granted by the Council of the EU following a favourable opinion from the Commission and subject to the endorsement by the European Council.
- 66. Countries wishing to accede usually precede this stage by issuing a declaration of intent. The Commission will dissuade countries from entering into formal accession if it feels they are not sufficiently ready. In more recent years candidate countries have engaged in bilateral agreements (i.e. Europe Agreements, Association Agreements, Stability and Association Agreements’) with the EU prior to making a formal application under Art. 49. For example, Western Balkan countries were and some still are ‘potential’ candidate countries. These countries are part of a special framework known as ‘stabilisation and association’ which has three aims: 1) political stabilisation and economic development, 2) promotion of regional cooperation, and 3) eventual membership of the EU. During this phase these potential candidate countries are given financial assistance, trade concessions etc.
- 67. Croatia formally applied for EU candidacy in 2003 but did not receive formal candidate status until 2004. A slight delay seems to have been caused by a change in government. Serbia submitted its application for EU membership in 2009 but was not given candidate

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status until 2012 after it reached an agreement on Kosovo's regional representation. Albania made its request in 2009 but was not given candidate status until 2014 after sufficient reforms had been made to its judicial and public administrations. This paper presents recent examples of accession processes, below.

Negotiations and screening process

68. Negotiations are opened following a unanimous decision of the Council of the EU. Negotiations take place in intergovernmental conferences between the governments of the EU countries and of the candidate country. Any substantial concerns of current member states will likely be raised during this phase; their support/concerns will have a major impact on the speed of negotiations. The body of EU law is divided into policy areas each to be negotiated separately (see annex 4)
69. During the negotiations, the Commission monitors the candidate country's efforts to implement the *acquis*. It also assists the candidate countries during the process with pre-accession funding instruments.
70. Transitional (or special) arrangements - the parties also discuss whether (and how) some rules can be introduced gradually to allow the new member or existing EU countries time to adapt. This is mainly discussed during the final stages of the negotiations
71. Running in parallel with the negotiations is the so-called screening stage. This consists of verifying whether individual items of the *acquis* listed in a given chapter have been transposed into the law of the candidate country. Only when the candidate country shows that it has already implemented a chapter, or that it will implement it by the date of accession, can that chapter be provisionally closed. The exception is where a candidate country agrees special transitional arrangements with respect to a part of the *acquis* (see below).
72. The Commission informs the Council of the EU and European Parliament throughout the process, in particular by means of annual progress reports. These reports are discussed in the European Parliament which submits its observations in resolutions adopted by plenary. So, although not party to the negotiations, the European Parliament plays an influential role in several aspects of the process. The candidate country also draws up annual national programmes in which it assesses its own progress in implementing the different chapters of the *acquis*.
73. In addition, it has been suggested that the European Court of Auditors will be more involved in the decision making regarding future EU enlargement and will write country reports two years before the Commission's intended date of accession.

Accession

74. When negotiations on all the chapters are completed, the terms and conditions – including possible safeguard clauses and transitional arrangements – are incorporated

into an accession treaty. The accession treaty must be approved unanimously by the Council of the EU and must receive the consent of the European Parliament – though it is unlikely for there to be any substantial issues raised at this late stage. The treaty is then signed by each of the EU countries and by the acceding country and ratified by each EU country and by the acceding country, each according to its own constitutional procedures.²

Membership criteria

75. The *acquis communautaire*, often shortened to *acquis*, consists of the EU's treaties and laws, declarations and resolutions, international agreements on EU affairs and the judgments given by the Court of Justice. The EU *acquis* currently consists of 35 chapters, although the number of chapters changes with each membership negotiation. Also known as the Copenhagen Criteria, these chapters have to be successfully opened, negotiated and closed.
76. [REDACTED]
77. Prior to the 2014 referendum, a scoping exercise was conducted to identify what administrative structures would be required in order for an independent Scotland to implement the EU *acquis*. This involved an assessment of the obligations that would accrue from EU membership in respect of areas that are currently reserved (such as regulation of Financial Services) and also devolved areas where there are shared obligations and structures between Scotland and rUK (such as transport). [REDACTED]

Special arrangements

78. [REDACTED]
79. [REDACTED]

Presently, the UK has specific opt-outs (permanent derogations) relating to the Economic and Monetary Union (currency), the Schengen Area, the Charter of Fundamental Human Rights, and the Area of Freedom, Justice and Security (AFJS). In addition, there is also the historic rebate on EU budget contributions and the ability to apply a zero rate of VAT to a number of specific products.

Proposed Timeline

80. Whilst the section below pulls out examples from recent accession processes for other countries, an independent Scotland would be in a distinctive position having already been part of the EU through the UK's membership. [REDACTED]

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14536>

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Previous examples of accession

81. Over the course of 34 years, 21 Member States have joined what is now the EU in six separate enlargements. There is a degree of flexibility in acceding to the EU and each case is unique.
82. The fastest EU accession was that of Finland, which was already an EFTA member and completed in just two years and nine months. Others have taken much longer for example for Bulgaria and Romania it took 12 years from the date they applied for membership until they formally acceded to the EU.
83. The length of time in the following table was calculated from the date EU negotiations began until the date the country formally acceded to the EU. The exception to this is the unique case of East Germany which has been described as 'EU enlargement without accession'.
84. The accession negotiations for the 2004 enlargement were based on the principle of "differentiation", i.e. each country progresses at its own pace according to its level of preparation for accession. The length of the negotiations therefore varied according to each country's progress.'

Acceding country	Timespan Accession Negotiations/Reforms	Length
East Germany	Measures started to be put in place on 21 August 1990, Joined 3 October 1990	1.5 months
Sweden, Finland Austria	1 February 1993 – 1 January 1995 <u>Application for EU membership submitted</u> Austria – July 7 1989 Sweden – July 1991 Finland – March 1992	2 years
Poland, Lithuania, Latvia, Estonia, Czech Republic, Slovenia, Slovakia, Hungary, Malta, Cyprus	31 March 1998 (negotiations began for 6 best prepared countries – 1 May 2004 <u>Application for EU membership submitted</u> Slovenia – June 1996 Czech Republic – January 1996 Lithuania – December 1995 Estonia – November 1995 Latvia – October 1995 Slovakia – June 1995 Poland – April 1994 Hungary – March 1994	6 years

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	Malta – July 1990 Cyprus – July 1990	
Romania, Bulgaria	15 February 2000 – 1 January 2007 <u>Application for EU membership submitted</u> Bulgaria – December 1995 Romania – June 1995	7 years
Croatia	October 2005 – July 2013 <u>Application for EU membership submitted</u> February 2003	8 years

85. Presently there are five candidate countries going through the process of negotiating membership into the EU (Albania, Macedonia, Montenegro, Serbia and Turkey) and two potential future candidates (Kosovo and Bosnia and Herzegovina). Of these countries only 3 have closed any chapters and even then Montenegro leads with only 3 chapters closed to date. Annex 10 provides further detail regarding current candidates and their progression.

[REDACTED – two pages – out of scope]

Annex 3: Key sections from the Treaty on European Union (TEU)

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3

(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.

It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.
5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Annex 4: Overview of EU Acquis

Chapter	Title
Chapter 1	Free movement of Goods
Chapter 2	Freedom of movement for workers
Chapter 3	Right of establishment and freedom to provide services
Chapter 4	Free movement of capital
Chapter 5	Public procurement
Chapter 6	Company law
Chapter 7	Intellectual property law
Chapter 8	Competition policy
Chapter 9	Financial services
Chapter 10	Information society and media
Chapter 11	Agriculture and rural development
Chapter 12	Food safety, veterinary and phytosanitary policy
Chapter 13	Fisheries
Chapter 14	Transport Policy
Chapter 15	Energy
Chapter 16	Taxation
Chapter 17	Economic and monetary policy
Chapter 18	Statistics
Chapter 19	Social policy and employment
Chapter 20	Enterprise and industrial policy
Chapter 21	Trans-European networks
Chapter 22	Regional policy and coordination of structural instruments
Chapter 23	Judiciary and fundamental rights
Chapter 24	Justice, freedom and security
Chapter 25	Science and research
Chapter 26	Education and culture
Chapter 27	Environment
Chapter 28	Consumer and health protection
Chapter 29	Customs union
Chapter 30	External relations
Chapter 31	Foreign, security and defence policy
Chapter 32	Financial control
Chapter 33	Financial and budgetary provisions
Chapter 34	Institutions
Chapter 35	Other issues:(i.e. for Serbia it was identified that there has to be a normalisation of relations between Serbia and Kosovo).