

Doc 1. Post- Brexit routes to membership of the EU

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However this was whilst the UK was still a Member State and premised on agreement between the UK Government and Scotland and Mr Barroso stated that *'The Committee will understand that it is not the role of the European Commission to express a position on questions of internal organisation related to the constitutional arrangements of a particular Member State.'*

4. EU Accession procedure

The accession procedure timetable outlined below takes into account the variance in timings that may occur as a result of differing start points. The estimated times below cover the expected duration of each step.

4.1. Application [1-3 months]

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.

4.2. Candidate status [1-12 months]

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.

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.

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4.3. Negotiations [18-36 months]

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. The body of EU law is divided into policy areas each to be negotiated separately. (There are currently 35 policy areas or 'chapters'. See section 5 below)

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, such as TAIEX. **TAIEX** is the Technical Assistance and Information Exchange instrument of the European Commission. TAIEX supports public administrations with regard to the approximation, application and enforcement of EU legislation as well as facilitating the sharing of EU best practices.

Transitional 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.

4.4. Screening process [parallel to negotiations phase]

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 arrangements with respect to a part of the *acquis*. (see section 5 below)

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*.

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.

4.5. Accession [12-18 months]

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. 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.¹

5. Membership criteria

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.

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6. Proposed Timeline

Each candidate's case is unique, moving forward at varying speeds. Whilst the section below pulls out examples from recent accession by other countries, an independent Scotland would be in a distinctive position having already been part of the EU through the UK's membership.

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There are also a number of key dates to bear in mind when projecting these timelines:

'Brexit Day': March 2019

EU European Parliament Elections: May 2019

Scottish Parliament Elections: May 2021

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The EU needs to ensure that its institutions and decision-making processes remain effective and accountable; it needs to be in a position, as it enlarges, to continue developing and implementing common policies in all areas; and it needs to be in a position to continue financing its policies in a sustainable manner.

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Traditionally, Member States acceding the EU have done so in groups so it maybe that the timing of the next accession phase is contingent on other countries concluding their negotiation agreements.

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7. Previous examples of accession

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:114536>

7.1 Overview

Over the course of 34 years, 21 Member States have joined what is now the EU in six separate enlargements. The Treaty provides little clear cut guidance on the main principles or the various steps of the enlargement process between application and accession. It can be described as "vague" and "imperfect" whilst some people see Article 49 as simply an "outline" and thus deliberately short on detail. Therefore it is important to remember that there is a degree of flexibility in acceding to the EU and that each case is unique.

It should be noted that when Iceland applied to join the EU in 2010, the Commission took account of Iceland's EEA membership and closed many negotiating chapters quickly (before Iceland withdrew its application in 2013). By contrast, only one out of 35 negotiating chapters has been closed with Turkey, after many years of talks.

The fastest EU accession was that of Finland, which was 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.

7.2 Recent historical accession processes²:

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'.

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,	31 March 1998 (negotiations began for 6 best prepared countries – 1 May 2004	6 years

² Dates of application for candidature <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:e50017>

Czech Republic, Slovenia, Slovakia, Hungary, Malta, Cyprus	<u>Application for EU membership submitted</u> Poland – April 1994 Lithuania – December 1995 Latvia – October 1995 Estonia – November 1995 Czech Republic – January 1996 Slovenia – June 1996 Slovakia – June 1995 Hungary – March 1994 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

7.3 Current candidate countries

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).

Candidate country	Year membership application submitted	Number of chapters closed	Main reasons for delays/lack of progress
Albania	2009	0	Candidate status granted in 2014. REDACTED [OUT OF SCOPE]
Macedonia	2004	0	Candidate status granted in 2005. Since 2009 the European Commission has recommended that negotiations commence. REDACTED [OUT OF SCOPE]
Montenegro	2008	3 'provisionally' closed.	Negotiations began in June 2012. As of 2017 28 negotiating Chapters, including the rule of law Chapters have been opened, out of which 3 chapters have been provisionally closed. [REDACTED OUT OF SCOPE]
Serbia	2009	2 'provisionally' closed,	Negotiations began in January 2014. REDACTED [OUT OF SCOPE]

Turkey	1987	1 'provisionally' closed	Negotiations opened in October 2005. REDACTED [OUT OF SCOPE]
Kosovo	n/a	0	Potential Candidate. Stabilisation and Association Agreement entered into force. REDACTED [OUT OF SCOPE]
Bosnia and Herzegovina	2016	0	Potential Candidate. Stabilisation and Association Agreement entered into force in June 2015. Bosnia and Herzegovina applied for EU membership in February 2016, REDACTED [OUT OF SCOPE]

8. Special arrangements

It is possible for transitional arrangements which permit derogations from the EU *acquis* to be put in place for acceding countries. For example, in some areas of *acquis* the EU and Croatia negotiated specific arrangements to enable the country's smooth integration into the EU. The most important of these relate to freedom of movement for workers, free movement of capital, competition policy, financial services, transport and internal borders. Where transitional periods were agreed, they were limited in time and scope. The duration of these arrangements can be different for different policy areas.

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Doc 2. Routes

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EU accession procedure

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Candidate status

1. 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.
2. 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.

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Negotiations and screening process

3. 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)

4. 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.
5. 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
6. 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).
7. 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*.
8. 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

9. 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.³

Membership criteria

10. 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

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14536>

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.

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11. 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).

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Special arrangements

12. It may take some time for Scotland to have sufficient evidence to demonstrate meeting the EU criteria, and there may need to be temporary derogations (exemptions from obligations over a transitional period) in certain chapters of the *acquis* (e.g. the euro). Furthermore, the setting up of appropriate administrative and regulatory structures could have financial implications and require time to complete.
13. It is possible for transitional arrangements which permit derogations from the EU *acquis* to be put in place for newly acceded countries. For example, in some areas of *acquis* the EU and Croatia negotiated specific arrangements to enable the country's smooth integration into the EU. The most important of these relate to freedom of movement for workers, free movement of capital, competition policy, financial services, transport and internal borders. Where transitional periods were agreed, they were limited in time and scope. The duration of these arrangements can be different for different policy areas.

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Proposed Timeline

14. 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. The speed of the negotiation and ratification process is contingent on political will. The further the final Brexit deal diverges from the current status quo, the more complex the process may become for an independent Scotland.

Previous examples of accession

15. 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.
16. 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.
17. 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'.
18. 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.'

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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 Malta – July 1990 Cyprus – July 1990	6 years

Romania, Bulgaria	15 February 2000 – 1 January 2007 <u>Application for EU membership submitted</u> Bulgaria – December 1995 Romania – June 1995	7 years
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19. 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.

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Doc 3 – BRIEFING ON SCOTLAND’S FUTURE RELATIONSHIP WITH THE EU

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It is important to note that there are several stages prior to the start of accession negotiations. The European Commission assesses the applicant state’s capacity to meet the criteria set by the Copenhagen European Council of 1993 (plus any specific conditions), then EU governments must unanimously agree to formally open negotiations. Finally the mandate for negotiations with the candidate country must also be agreed. As such, my officials will also be examining Copenhagen criteria to ensure that we meet the conditions for opening negotiations as part of this work. An overview of the criteria for accession is attached at Annex A.

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DOC 4 – EU ACCESSION PAPER

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Following a Yes vote but pre-independence, Scotland would not yet be a formal (legally and constitutionally) independent country

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The decision on how quickly Scotland will become a full member will be a matter for both the Scottish and EU member state governments. REDACTED [EXEMPTION] it is important to remember that Scotland will be in a unique position having already been in the EU and therefore complying with most of the acquis. On the other hand this timing will also depend on how the Scottish Government approaches other policy issues, including the question of an independent currency.

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