

DOCUMENT 3**Post- Brexit routes to membership of the EU**

The Scottish Government has a clear position that membership of the European Union (EU) is in Scotland's interests; on 23 June 2016, 62% of the votes in Scotland were for the UK to remain within the EU. While recognising the concerns of those who voted to leave, the First Minister has stated her strong desire for Scotland to be a full and active member of the European family of nations. The aim of this paper is to provide an initial overview of potential post Brexit routes for Scotland to re-join the EU. Here we explore two possible routes, which are not mutually exclusive and Route 1 could be a precursor to route 2. This will become evident as the paper develops.

From a Scottish perspective, there are substantial contingencies on the options presented below related to the on-going Brexit negotiations between the UK and the EU, in particular in relation to the form of any potential transition period, and also the final form of the EU Withdrawal Bill. There are also further contingencies surrounding political developments in the EU more widely, most notably the situation surrounding Catalonia and on-going tensions about the future direction of the European Union. Therefore, this paper provides only an initial assessment based on the current situation.

Route 1: EFTA/EEA as a transition to EU membership

Assumptions: The UK, including Scotland has exited the European Union and the European Economic Area and subsequently Scotland has become an independent state.

Future relationship with Europe: Scotland secures EFTA and EEA membership as a transition to potential EU membership in the future.

Route 2: Accession to the EU as an independent member state

Assumptions: The UK, including Scotland, has exited the European Union and the European Economic Area and subsequently Scotland has become an independent state.

Future relationship with Europe: Scotland is a full member of the EU

Route 2: Accession to the EU as an independent member state**1. Background:**

Since 2014, the circumstances regarding Scotland's potential EU membership have changed significantly. The current Brexit process being undertaken at a UK level means that an independent Scotland would be likely to be negotiating entry to the EU from outside the EU. This is opposed to the situation in 2014 where, if the independence vote had been successful, Scotland would have been transitioning to independence with the security of EU membership for at least the short to medium term.

Acceding countries to the EU have to apply to become members of the EEA arrangement which means that everything that has been agreed with the candidates during the negotiations will concern the three EEA-EFTA states, as far as EEA related matters are concerned. Therefore, the preceding phases relating to EU membership are extremely important and any transitional periods play an increasingly vital role in plotting the trajectory of attempted EU membership. EEA accession of potential candidates is a matter of extending the internal market, which has historically been seen as a prior precedent for countries wanting to join the EU as a full member.

No country has ever left the EU before, or tried to re-enter it subsequently. Thus, it has not been possible to determine the exact procedures involved were an independent Scotland to request re-joining the EU. However, EU Member States are likely to expect Scotland to meet the normal requirements of EU membership. Therefore, as the UK is likely to leave the EU, we start from the assumption of re-entry being based on the usual accession process. There are also no pre-suppositions of having joined EFTA/EAA, although that could be one potential route.

2. EU accession legal basis:

The Treaty on European Union 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

3. Eligibility:

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**)
- 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:
 - 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.
 - 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, including what these might mean for a new country with a little demonstrable evidence of a robust economy as an independent country.
 - 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. (see section 5 below)

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

It is not clear whether the EU would be willing and able to negotiate with a Scotland in the process of transitioning to independence (i.e. prior to fully exiting the UK); in 2013 the then President of the European Commission Jose Manuel Barroso, made it clear that from an EU perspective it could be feasible that negotiations could run in tandem between Scotland-UK and Scotland-EU. 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. 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.

The Commission could suggest this course for Scotland immediately after it exits the UK. Scotland would have EU support whilst extricating itself from the rest of the UK (e.g. A European Partnership for Scotland).

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 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.

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.²

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:114536>

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. [REDACTED – out of scope]

[REDACTED – out of scope]

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 (such as Transport). The initial analysis showed that the number of additional administrative structures required is significant. In the context of the UK leaving the EU, the number of additional administrative structures is likely to be even more significant (**annex 2**).

Although there should be no reason why an independent Scotland could not ultimately meet these criteria, it may take some time to do so before sufficient evidence is available to support the application, and there may need to be temporary derogations (exemptions from obligations) in certain chapters of the *acquis* (e.g. the euro). Furthermore, the setting up of appropriate administrative and regulatory structures is likely to be expensive and lengthy. Summaries of chapters of the EU *acquis* and further information concerning meeting the *acquis* is located in **Annex 3 [to be added]**.

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. The speed of the negotiation and ratification process is contingent on political will, the agreed final Brexit position agreed for the UK, the nature of Scotland's exit negotiations from the UK, and any competing priorities the EU may have at that time. The further the final Brexit deal diverges from the current status quo, the more complex the process may become for Scotland.

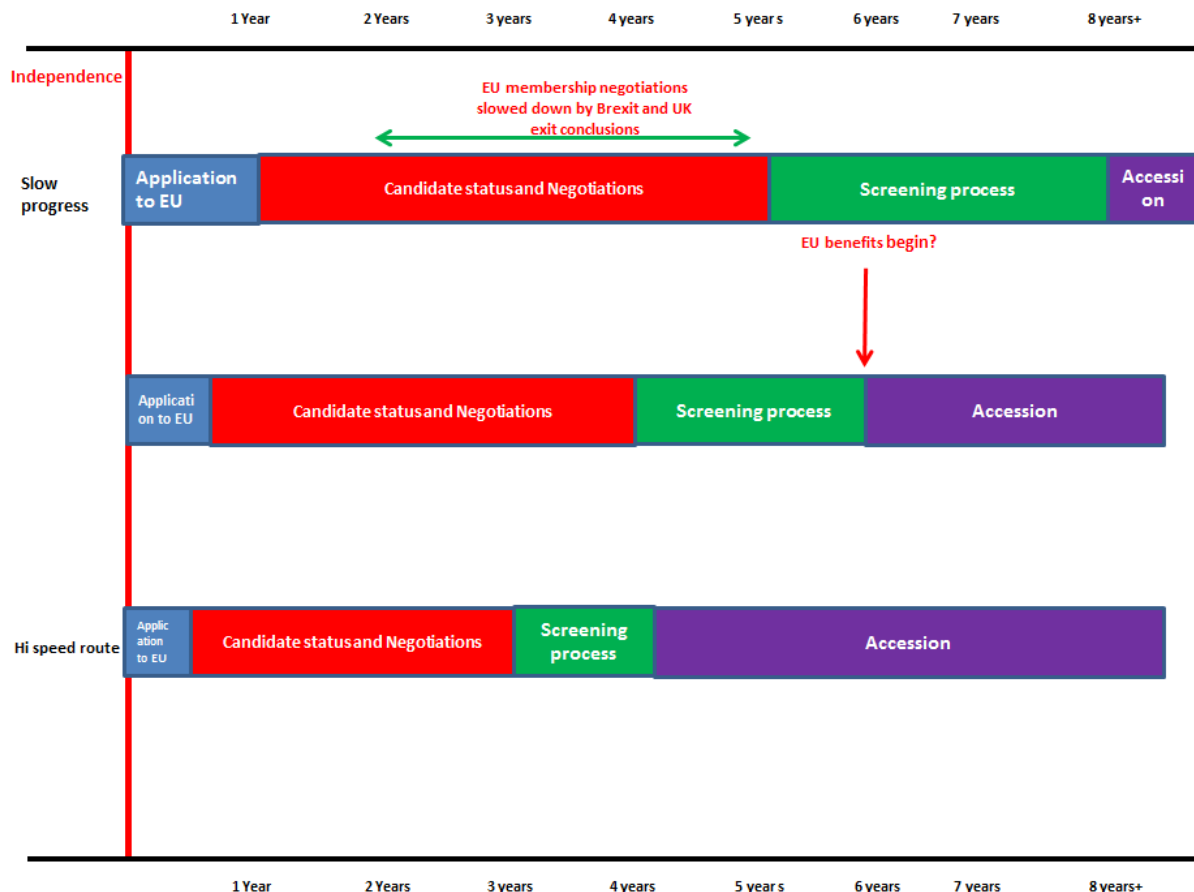
The best case scenario for Scotland would involve a total timeline 3-4 years and the upper limit could be up to 8 years, based on Scotland acceding to the EU from third country status.

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



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.

Although we would not envisage the EU’s absorption criteria being a challenging aspect of the EU membership criteria, there may be challenges over the timing and/or speed of a potential independent Scotland’s accession. 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. [REDACTED – section 30(b)(ii)]

7. Previous examples of accession

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 processes³:

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

³ Dates of application for candidature <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:e50017>

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> 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	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
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.

			Critical reform of the judicial system is required before negotiations can begin and this is being blocked by the Albanian parliament.
Macedonia	2004	0	Candidate status granted in 2005. Since 2009 the European Commission has recommended that negotiations commence. The main obstacle to the opening of negotiations is Greece's opposition to its name. When negotiations do finally begin it is foreseen that the 'environment' chapter will be the biggest challenge. Judiciary and fundamental rights and Justice, freedom and security are also foreseen to be difficult.
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. Progress on the fight against corruption and organised crime are key to determining the pace of negotiations. Concerning the economy, it needs to reduce rising public debt levels and improve revenue collection.
Serbia	2009	2 'provisionally' closed,	Negotiations began in January 2014. Main challenges are fight against corruption and its refusal to recognise Kosovo unless given EU membership.
Turkey	1987	1 'provisionally' closed	Negotiations opened in October 2005. Eight chapters not opened because of Turkey's refusal to apply to Cyprus the Additional Protocol to the Ankara Agreement. Deterioration of democracy and human rights.
Kosovo	n/a	0	Potential Candidate. Stabilisation and Association Agreement entered into force. Its unilaterally declared independence in 2008 is not recognised by Spain, Slovakia, Greece, Romania and Cyprus.

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, Delays as a result of its complex political system, lack of recognition of rights of ethnic minorities, reforms still required in relation to the rule of law.
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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.

[REDACTED – out of scope]

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

The political situation regarding the shared opt-outs negotiated by the UK has significantly changed. [REDACTED – out of scope]

The following paragraphs briefly present the opt-outs

[REDACTED– out of scope]

8.1 The UK's opt-out of the Economic and Monetary Union

The UK's opt-out of third stage of the Economic and Monetary Union (EMU) is the reason that the UK has not adopted the 'euro' as its national currency. Art. 119 TFEU obliges all Member States to adopt the euro and only Denmark and the UK have formal opt-outs; all newer members have been required to join the EMU. [REDACTED – out of scope]

8.2 Schengen

The Schengen area includes most EU Member States as well as the four EFTA states: Switzerland, Norway, Lichtenstein, and Iceland. The UK's opt-outs in Schengen means it does not participate in the border free travel area and it does not adopt the common rules for visas, asylum and border controls at the external borders of the participating states.

Ireland has a similar opt-out to the UK's given the Common Travel Area (CTA) between the two Member States. [REDACTED – out of scope]

8.3 EU Charter of Fundamental Rights

This opt-out, which the UK shares with Poland, is widely seen as not having any real effect and is considered as a simple clarification that the Charter does not extend the EU's or consequently the European Court of Justice's competence. [REDACTED – out of scope]

8.4 Area of Freedom, Security and Justice (AFSJ)

The UK has two protocols in this area: the first protocol allows the UK to choose whether or not to participate in forthcoming legislation concerning the area of freedom, security and justice. It shares this protocol with Ireland and Denmark also has a similar protocol. The UK has 3 months to decide whether or not to opt-in to new legislation in AFSJ. It was important for Ireland to negotiate this opt-out given its CTA with the UK. [REDACTED – out of scope]

The second protocol the UK has in this area allowed the UK to cease to apply a large majority of EU legislation in the fields of police and judicial cooperation which were adopted before the entry into force of the Lisbon treaty. [REDACTED – out of scope]

8.5. Historic Rebate on EU budget contributions

The rebate is an annual reduction which is 66% of the UK's contribution in the previous year and was agreed in 1984. [REDACTED- out of scope] Poland was the main beneficiary of the EU budget in 2013. It received from the EU budget more than three times its national contribution.

8.6 The ability to apply a zero rate of VAT to a number of specific products

This is different to 'VAT exemptions' under the VAT Directive which prescribes both supplies that EU countries must exempt and supplies that they may choose to exempt. Zero rated items means that the VAT paid on the inputs can be deducted. There are certain groups of goods or services on which some EU countries are still allowed to apply a reduced rate of zero to certain groups of goods. The list is available in Section V of European Commission document in the footnote.⁴ Member States which apply a zero rate to specific items are Belgium, Denmark, Ireland, Malta, Finland, Sweden, UK.

8.7 Examples of other Member States' special arrangements

Croatia has a transitional period of 7 years (2013-2020) during which it is permitted to retain pre-existing restrictions on the acquisition of agricultural land by non-Croatians from the EU and EEA area. Similar arrangements were applied to the Member States acceding in 2004. A possible 3 year extension of this period will be decided in 2020. The 7 year transitional period was granted to allow Croatia the chance to tackle agricultural and market challenges and experience convergence in agricultural land prices before full exposure to the single market.

⁴https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf.

Accession negotiations with Central and Eastern countries were officially closed in November 2002 and these countries acceded to the EU on 1 May 2004. These countries were not required to implement EU legislation adopted in this interim period. It was at the time of accession that these Member States were required to implement the legislation (mainly concerning climate change) that had been passed in the interim period.

Furthermore, specific arrangements limited in time and scope were agreed between the new Member States and the Commission in respect of certain legislation . For instance, in respect of the Directive on integrated pollution and prevention control (IPPC), transitional periods were granted to specific installations in Latvia and Poland (by 2010) and Slovenia and the Slovak Republic (by 2011), while 2007 was the deadline for the other Member States. In addition, a transitional period was granted to a few new Member States as regards the Large Combustion Plants Directive (LCP).⁵

⁵<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&ved=0ahUKEwiflsGW4fDXAhVEwBQKHa2nAcwQFghSMAk&url=http%3A%2F%2Fwww.springer.com%2Fcontent%2Fdocument%2Fdocument%2Fdownload%2Fdocument%2F9789067043236-c1.pdf%3FSGWID%3D0-0-45-1113984-p174058399&usg=AOvVaw3rpE17WipeOJO9oXamlzal>

Annex 1.**KEY SECTIONS FROM THE TREATY ON EUROPEAN UNION***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 2. Overview of EU Acquis

Chapter	Title	Reserved or devolved?	What is needed for Scotland to meet the chapter?	Timeframe
Chapter 1	Free movement of Goods	Reserved	3 new Scottish administrative bodies would be needed be set up to replace Department for Business, Energy and Industrial Strategy, The National Measurement and Regulation Office and the Office of Fair Trading.	Each 18-24 months
Chapter 2	Freedom of movement for workers	Reserved	An expanded team would be needed within the SG to replace the current DWP function	18-24 months
Chapter 3	Right of establishment and freedom to provide services	Reserved	2 new public bodies needed to replace Department for Business, Energy and Industrial Strategy (as in Chapter 1) and Ofcom	
Chapter 4	Free movement of capital	Reserved	1-2 new Scottish administrative bodies would be need to be set up to replace Banking regulators	Each 24-36 months
Chapter 5	Public procurement	Devolved	n/a	
Chapter 6	Company law	Reserved	1 new Scottish administrative body would be need to be set up to replace Companies house	18-24 Months
Chapter 7	Intellectual property law	Reserved	1 new Scottish administrative body would be need to be set up to replace the Intellectual Property Office or Scotland could buy into UK IPO	6-12 months
Chapter 8	Competition policy	Reserved	1 new Scottish administrative body would be needed	18-24 months

			replace Office of Fair Trading (as in Chapter 1). State aid should not require a new Scottish structure above and beyond The Scottish State Aid unit	
Chapter 9	Financial services	Reserved	New Scottish administrative bodies would be need to be set up to replace Financial policy Committee, Prudential Regulation Authority, Consumer Protection and Markets Authority and Economic Crime Agency	36-48 months
Chapter 10	Information society and media	Reserved	1 new Scottish administrative body would need to be set up to replace Ofcom (as per chapter 2)	18-24 Months
Chapter 11	Agriculture and rural development	Devolved	Further analysis required	
Chapter 12	Food safety, veterinary and phytosanitary policy	Devolved	Further analysis required	
Chapter 13	Fisheries	Devolved	Further analysis required	
Chapter 14	Transport Policy	Devolved (mostly)	Further analysis required but likely to be a large programme of change	
Chapter 15	Energy	Reserved (some)	Up to 5 new Scottish administrative bodies would be need to be set up to replace OFGEM, Office of Nuclear Regulator, Energy Saving Trust	24-36 months
Chapter 16	Taxation	Devolved (some)	Member States must ensure that the necessary implementing and enforcement capacities, including links to the relevant EU computerised taxation systems, are in place.	

Chapter 17	Economic and monetary policy	Reserved	New Member States are committed to be able to adopt the euro in due course after membership.	
Chapter 18	Statistics		2 new public bodies needed - Scottish National Statistics authority (to replace UKSA) and an enhanced OCEA	18-24 months
Chapter 19	Social policy and employment	Reserved	Further consideration required.	
Chapter 20	Enterprise and industrial policy	Reserved	Further analysis required	
Chapter 21	Trans-European networks		Up to five new Scottish administrative bodies would be need to be set up to enhance SE, HIE, SDI, VS and competition commission. At local level LAs who are responsible for the delivery of local economic development including the Business Gateway service	18-24 months
Chapter 22	Regional policy and coordination of structural instruments	Devolved	1 new Scottish administrative body would be need to be set up to replace/enhance existing European Structural Funds work	18-24 months
Chapter 23	Judiciary and fundamental rights	Devolved	No new arrangements necessary but further work to be done	
Chapter 24	Justice, freedom and security	Reserved	1 new Scottish administrative body would be need to be set up to replace UK Boarder Authority	
Chapter 25	Science and research	Devolved	1 new Scottish administrative body would be need to be set up to replace Department for Business, Energy and Industrial Strategy (as in Chapter 1)	
Chapter 26	Education and culture	Devolved	2 new Scottish administrative bodies would be need to be	12-24 months

			set up to replace the British Council and Ecorys	
Chapter 27	Environment	Devolved	Further Analysis required	
Chapter 28	Consumer and health protection	Devolved	2 new Scottish administrative bodies would be need to be set up to replace Department for Business, Energy and Industrial Strategy and Office of Fair Trading (as in Chapter 1)	
Chapter 29	Customs union	Reserved	Further analysis required	
Chapter 30	External relations	Reserved	Member States need to ensure capacity to participate in the EU's development and humanitarian policies and to progressively align with the policies and positions adopted by the Union and its Member States.	18-24 months
Chapter 31	Foreign, security and defence policy	Reserved	An expanded team would be needed internally within the SG to replace Common Foreign and Security Policy (CFSP) and Common and Defence Policy (CSDP) teams at UK level	12-18 months
Chapter 32	Financial control	Devolved	Further analysis required	
Chapter 33	Financial and budgetary provisions	Reserved	Further analysis required	
Chapter 34	Institutions		Further analysis required	
Chapter 35	Other issues:(i.e. for Serbia it was identified that there has to be a normalisation of relations between Serbia and Kosovo).			

Annex 3 [to be added]

Annex 4. Further Information on Accession Processes

Balkans

Slovenia blocked Croatia's accession talks in 2008 because of a maritime border issue: Croatia had prevented Slovenia from accessing international waters off Croatia's coast. The two sides eventually agreed to hand the matter over to the international tribunal in The Hague and this agreement allowed Croatia to resume membership talks and join the bloc in 2013. In June 2017 Croatia said it would not follow The Hague ruling issued in 2017 which granted Slovenia a 10 mile long sea corridor. Serbia, Montenegro and Bosnia still have unresolved border issues with Croatia and this issue could further delay EU accession for these countries.

It might be worthwhile looking more at Montenegro's accession. It declared independence from the State Union of Serbia and Montenegro in 2006. In 2008, the new country applied for EU membership and negotiations were opened in June 2012.

European Commission President Jean-Claude Juncker sent a "Letter of Intent" to the President of the European Parliament and to the chairperson of the Council of the EU in September 2017 announcing that the European Commission plans to create the ***Strategy for the successful accession of Serbia and Montenegro to the European Union*** by the end of next (2018) year, with a perspective of accession to the EU in 2025.

[REDACTED – out of scope]

DOCUMENT 4

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.
2. We have looked at four potential routes for an independent Scotland to re-join the EU, assuming that the UK, including Scotland, has exited the EU and the European Economic Area and Scotland has subsequently become an independent state. These are
 - i. Scotland secures European Free Trade Association (EFTA) membership as a transition to potential EU membership in the future.
 - ii. Scotland secures EFTA membership and then bilateral agreements with the EU as a transition to full EU membership in the future.
 - iii. Scotland secures EFTA and then European Economic Area (EEA) membership as a transition to potential EU membership in the future.
 - iv. Scotland becomes a full member of the EU.
3. Historically, EFTA and EEA have both been seen as preceding steps to EU membership and therefore this path is well trodden by other states (UK, Austria, Denmark, Portugal, and Sweden were founding members of EFTA). Finland became an EFTA associate member in 1961 and a full member in 1986). Joining EFTA, or EFTA and the EEA, could therefore be a transitional arrangement that would provide an open-ended arrangement prior to re-joining the EU.
- 4.
5. [REDACTED] The process of joining the EU from within the EEA would likely be quicker and easier as many of the requirements for EU membership would already be met.
6. This paper gives a technical overview (but has not yet been discussed with legal advisers) of these potential routes, and some of the strategic questions and choices that will need to be considered prior to choosing between these, and any potential alternative, routes.

Route 1: the European Free Trade Association (EFTA) as a transition to EU membership

Overview of EFTA

7. The European Free Trade Association (EFTA) is an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States – Iceland, Liechtenstein, Norway and Switzerland – and the benefit of their trading partners around the globe. EFTA promotes free trade, mainly of goods, between its Member States and with third countries through Free Trade Agreements (FTAs). Today, EFTA has 27 FTAs covering 38 countries and territories outside the EU. There is also free movement of goods between EFTA states.

8. There is no EFTA-EU trade agreement; instead Iceland, Liechtenstein and Norway are part of the European Economic Area (EEA) agreement and Switzerland has bilateral agreements with the EU. As such, being a member of EFTA does not in itself provide a trade partnership with the EU.

9. EFTA does not envisage political integration and does not have a coordinated trade policy (i.e. EFTA states do not form a customs union). This means that EFTA states do not share a Common External Tariff and are able to enter into their own trade agreements with third parties. Therefore they can benefit from maintaining sovereignty (trading with who they like) and the benefits of being part of a larger trading bloc where their priorities are aligned with other EFTA members. In practice, most of the FTAs require EFTA members to reconcile their national interests around shared positions.

10. Annex 2 provides more details of the EFTA convention. However it is worth noting that the updated EFTA Convention (2002) integrates the principles of the EEA agreement and the bilateral agreements between Switzerland and the EU so that all EFTA members benefit from virtually the same privileged relationship among themselves as they do with the EU. This includes ‘to progressively liberalise the free movement of persons’.

[REDACTED – 3 paragraphs]

EFTA Application process – *timings are estimated minimum time for each stage*

Formal application (1-3 months)

14. According to Article 56 of the EFTA Convention, “*any State may accede to the Convention provided that the EFTA Council decides to approve its accession. As regards further formal requirements, any new member state would have to apply to become a party to existing EFTA free trade agreements (Article 56(3)).*”

15. The requirements for joining EFTA are at the discretion of the EFTA Council – ministerial representatives of the four EFTA Member States. The absence of a clearly defined application process and criteria gives scope for flexibility, though it may take a few months for EFTA to agree whether or not to take forward an application for

membership.

Negotiations (3-6 months)

16. The EFTA Convention states that any new EFTA state would have to apply to become a party to existing EFTA FTAs. Because of this, states cannot simultaneously be part of the EU and EFTA.

17. It is not clear from the convention text whether the new member would be required to join all EFTA FTAs on accession, or could opt for bilateral agreements with some of those countries. The Convention suggests that joining EFTA is not conditional on actually joining EFTA's FTAs, but requires an applicant state to *apply* to join them. Revisions to those agreements would be part of separate negotiations, each of which could take several months.

[REDACTED – 1 paragraph]

19. [REDACTED] Each member state's contribution to the annual budget is determined by the council, based on the country's GDP and whether or not they are part of the EEA. Norway pay the biggest share (currently 55%, at just over £9 million) and Switzerland make up most of the rest of the budget (currently 42%)¹.

Council approval (1-3 months)

20. The decision regarding accession which the EFTA ministers make would require approval at national level from all four states i.e. in national parliaments. There could be a potential delay at this point.

21. The EFTA Convention is silent on the actual approval requirements. With the accession of Finland (which left EFTA when it joined the EU), the EFTA states were required to give notice that they either accepted the decision "without reservation" or that "their affirmative vote had been approved in conformity with their constitutional requirements".

Parliamentary vote and ratification (1-3 months)

22. The process by which each EFTA state can provide such notice is for each to determine. Precedent suggests and constitutional requirements provide for a parliamentary vote. [REDACTED]. As for Scotland, it would be for the government to ratify.

Timeline

23. EFTA's experience of processing membership applications is limited, but as a smaller and more differentiated organisation than the EU, accession to EFTA should

¹ <http://www.efta.int/About-EFTA/Financial-Information-748> and <http://iasir.net/AIJRHASSpapers/AIJRHASS14-306.pdf>

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be both quicker and easier than accession to the EU, provided there was sufficient political will amongst the EFTA states.

24. The length of time from application to accession could be less than a year depending on the timing of an application, the progress of negotiations on free trade agreements and domestic parliamentary calendars. However progress would be heavily dependent on political will of the EFTA states on one side, and on a clear Scottish position on the FTAs it was applying to join on the other..

25. Whilst there is no formal process given in the EFTA convention for becoming an associate member, it might be reasonable to assume that an associate membership would be a quicker joining process.

26. Three countries, Austria, Sweden and Finland, directly joined the EU from being EFTA members. Their EU accession talks took 13 months (to complete 'politically'), and 17 months in total (from February 1993 to June 1994) to negotiate and sign the accession treaties. There was then a further six months for ratification – so they joined the EU in January 1995.

Options once an EFTA member

27. Although there might be symbolic value in re-joining EFTA, and membership would give Scotland access to FTAs with a number of global partners, it would not provide a trade relationship with the EU. Three main options would be available to Scotland once a member of EFTA to formalise that relationship with the EU:

- a) **Bilateral agreements with the EU.** The EU is pushing for Switzerland to formalise its current bilateral agreement relationship into something more like the EEA, so negotiations may be tricky. Were Scotland to piggy back on similar bilateral agreements to those of Switzerland (rather than bespoke ones), Switzerland might become a helpful ally. See route 2.
- b) **Apply to join the EEA agreement** – see route 3 .
- c) **Start the accession process to the EU** – see route 4.

Route 2: Bilateral agreements with the EU as an transition to membership

Overview of EU-Swiss relations

28. EU-Swiss relations are **governed** by bilateral agreements; there are 20 main agreements and some 100 secondary agreements. Switzerland closely cooperates on security matters with Europol and Eurojust and is an associate member of Euratom.
29. **The Agreements:** The Bilateral Agreements I signed in 1999 cover 7 sector-based agreements and is governed by a 'guillotine clause' (i.e. if one of the agreements in this package is terminated, the others also fall). This package covers free movement of persons, technical trade barriers, public procurement, agriculture, and air and land transport. In addition, Switzerland is fully associated into the EU's framework research programmes. The free movement of people is not automatically extended to new EU Member States but must be negotiated. Free movement of people is considered by the EU as a 'sine qua non' condition of its relations with Switzerland.
30. [REDACTED]
31. The Bilateral Agreements II, signed in 2004, cover inter alia: Schengen/Dublin, automatic exchange of information in tax matters, processed agricultural products, the environment, statistics and pensions, and the anti-fraud agreement. Switzerland also participates in the EU Media Programme and the Environment Agency. In 2010 an agreement was signed on Swiss participation in EU education, professional training and youth programmes.
32. **What's covered:** Switzerland's barriers in **goods** with the EU are now almost as low as if it were in the EU. However, with the exception of aviation where Swiss airlines now compete with EU carriers on an almost equal footing, Switzerland does not have extensive agreements on **services**.
33. As Switzerland is not in the EU Customs Union, customs inspections on goods take place on either side of the EU-Swiss border.
34. Under the Swiss bilateral arrangement, as under the EEA arrangement, there is no requirement to participate in the common commercial policy, common agricultural policy or common fisheries policy.

[REDACTED – 2 paragraphs]
37. Disputes between the EU and Switzerland over these bilateral agreements are currently managed through approximately 20 joint committees. [REDACTED]

[REDACTED – 2 paragraphs]
40. **How it operates:** Switzerland's relations with the EU has developed over 40 years and is specific to Switzerland. [REDACTED]

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41. The bilateral agreements are based on mutual recognition of the equivalence of legislation. The on-going implementation of the bilateral agreements obliges

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Switzerland to take over relevant EU legislation in the covered sectors but this is not automatic (although the Swiss must do this if they want to retain access).

42. Switzerland pays a financial contribution to certain EU programmes and policies (for example it contributes financially to economic and social cohesion in the new EU Member States). In November 2017 the Swiss government pledged to renew a financial package with the EU to the tune of CHF1.3 billion (\$1.3 billion) over 10 years. Since 2007 Switzerland has contributed CHF 1.302 billion.
43. [REDACTED]
44. The process for developing bilateral agreements therefore has no formal mechanism. [REDACTED]
45. [REDACTED – 1 paragraph]

Route 3: EFTA/EEA as a transition to EU membership

Overview of the European Economic Area (EEA) Agreement

46. The EEA agreement unites a transnational, internal market which provides free movement of persons, goods, services and capital for its contracting parties: all EU members plus Norway, Iceland and Liechtenstein. As such, it has significant convergence with the EU, and so could be a useful and logical stepping-stone towards EU membership.
47. The EEA incorporates the four freedoms of the internal market (free movement of goods, people, services and capital) and related policies (competition, transport, energy, and economic and monetary cooperation). The agreement includes horizontal policies strictly related to the four freedoms: social policies (including health and safety at work, labour law and the equal treatment of men and women); policies on consumer protection, the environment, statistics and company law; and a number of flanking policies, such as those relating to research and technological development, which are not based on the EU *acquis* or legally binding acts, but are implemented through cooperation activities.
48. The EEA Agreement is not as extensive as the EU Treaties and does not cover EU policies such as: common agriculture and fisheries policies; customs union; common trade policy; common foreign and security policy; justice and home affairs; taxation or economic and monetary union. However, the EFTA / EEA states remain free bilaterally to commit to integration with the EU that goes beyond the scope of the EEA Agreement; for example, all EFTA States (including Switzerland) are part of the EU's passport-free travel area, Schengen.
49. To ensure conformity between the EEA and the EU, the EEA Agreement is dynamic; it is continually updated so that the Single Market remains homogenous throughout the EEA. Once new EU legislation has been incorporated into the EEA Agreement, each of the EEA Member States is bound by it regardless of whether they also happen to be members of the EU.

EEA application process

50. Article 126 of the Agreement on the EEA requires contracting parties to be a member or becoming a member of either the EU or EFTA.²
51. Having joined EFTA, an independent Scotland could apply to the EEA Council to join the EEA. The EEA Council meets twice a year at ministerial level and provides political impetus for the development of the EEA Agreement. The EEA EFTA States are represented in the EEA Council by their respective ministers of foreign or European affairs. The European Union is represented by the rotating presidency of the Council of the EU, as well as representatives of the European External Action Service and the European Commission. The Presidency of the EEA Council alternates each term between the EU and the EEA EFTA side.

² <http://www.efta.int/eea/eea-agreement>

52. Article 128(2) provides that the terms and conditions for participation will be the subject of an agreement between the contracting parties and the applicant state. That agreement 'shall be submitted for ratification or approval by all contracting parties in accordance with their own procedures.' The length of time for joining the EEA will therefore depend on the political will of other contracting parties.
53. The core of the EEA Agreement is the requirement that the EEA EFTA countries adhere to the four freedoms of the EU Single Market and give effect in domestic law to all EU law obligations that impact on the rules of the Single Market. Given these parallels, it is likely that the time taken from EEA to EU membership would be significantly quicker than from third country to EU. Indeed, when Iceland applied to join the EU in 2010, the European 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 intermittent talks.

The influence of EFTA-EEA states over EU policy

54. The EFTA EEA states do not have the same level of influence as EU member states on the formulation of new EU policy, principally as they cannot participate formally in voting on legislation and have no veto.
55. There are also no provisions in the existing EEA/EFTA agreements that refer to decision shaping on *existing* legislation. It is worth bearing in mind that since the establishment of the EEA/EFTA the decision making procedures in the EU have evolved. The Parliament and the Council have more prominent roles, with the co-decision procedure, and more influence is exerted on behalf of these two institutions than was the case previously. [REDACTED]
56. [REDACTED]
57. Although we are not aware of any examples of EFTA EEA formally proposing legislation (although they can table proposals 'as a matter of concern' either in the EEA Council or the Joint Committee (Article 5 EEA Agreement)), EFTA states can influence policy direction. For example, EFTA identified the need for a study in certification marks for children's toys and initiated a study in 2006. The study may have contributed to the European Parliament deciding that a further study would be required by the European Commission. The final study from the European Commission refers to EFTA's work and its findings are in line with the conclusions EFTA came to.

[REDACTED – 2 paragraphs]
60. In general Switzerland has no formal say in EU decision-making and in contrast to EFTA EEA states Swiss experts are not allowed to sit on EU expert groups. The exception to this is the case of Schengen/Dublin where Switzerland also has the competence to participate in shaping any new developments but cannot vote. Switzerland is often referred to as an 'observer' – a term implying a more passive

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relationship that EEA/EFTA states are not frequently given. Switzerland must also autonomously amend its own laws in order to continue having access to the single market, although from an EU perspective, the treaties largely contain the same content as those of the EEA, making Switzerland a virtual member. Whilst there is the potential for Switzerland to negotiate its own special arrangements directly with the EU, recently some disagreements with the EU have resulted in the bilateral agreements coming under threat

Route 4: 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.³

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,

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012M049>

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protection of human rights and minorities. As such, we can expect an independent Scotland to meet these criteria.

- 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, including what these might mean for a newly independent country that has had little opportunity to demonstrate evidence of a robust economy as an independent state.
- 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 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.⁴

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. The process of meeting the *acquis* will involve the transposition of all EU law in to Scots law, and the setting up of requisite administrative and regulatory structures to implement EU law.
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). The initial analysis showed that the number of additional administrative structures required is likely to be significant. In the context of the UK leaving the EU, the number of additional administrative structures required by an independent Scotland is likely to be even more substantial. In addition, the change in material circumstances regarding the UK's membership of the EU means that any shared arrangements between Scotland and the UK may no longer be viable.

Special arrangements

78. 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.

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:I14536>

79. 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.

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. 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

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

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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
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<p>Poland, Lithuania, Latvia, Estonia, Czech Republic, Slovenia, Slovakia, Hungary, Malta, Cyprus</p>	<p>31 March 1998 (negotiations began for 6 best prepared countries – 1 May 2004</p> <p><u>Application for EU membership submitted</u></p> <p>Slovenia – June 1996 Czech Republic – January 1996 Lithuania – December 1995 Estonia – November 1995 Latvia – October 1995</p> <p>Slovakia – June 1995 Poland – April 1994 Hungary – March 1994 Malta – July 1990 Cyprus – July 1990</p>	<p>6 years</p>
<p>Romania, Bulgaria</p>	<p>15 February 2000 – 1 January 2007</p> <p><u>Application for EU membership submitted</u></p> <p>Bulgaria – December 1995 Romania – June 1995</p>	<p>7 years</p>
<p>Croatia</p>	<p>October 2005 – July 2013</p> <p><u>Application for EU membership submitted</u></p> <p>February 2003</p>	<p>8 years</p>

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.

Annex 1 : Relevant Articles EFTA Convention and EEA Agreement

ARTICLE 56 (EFTA)

Accession and association

1. Any State may accede to this Convention, provided that the Council decides to approve its accession, on such terms and conditions as may be set out in that decision. The instrument of accession shall be deposited with the Depositary, which shall notify all other Member States. This Convention shall enter into force in relation to an acceding State on the date indicated in that decision.

2. The Council may negotiate an agreement between the Member States and any other State, union of States or international organisation, creating an association embodying such reciprocal rights and obligations, common actions and special procedures as may be appropriate. Such an agreement shall be submitted to the Member States for acceptance and shall enter into force provided that it is accepted by all Member States. Instruments of acceptance shall be deposited with the Depositary, which shall notify all other Member States.

3. Any State acceding to this Convention shall apply to become a party to the free trade agreements between the Member States on the one hand and third states, unions of states or international organisations on the other.

ARTICLE 128 (EEA)

1. Any European state becoming a member of the Community shall, or becoming a member of EFTA may, apply to become a party to this agreement. It shall address its application to the EEA Council.

2. The terms and conditions for such participation shall be subject of an agreement between the contracting parties and the applicant state. That agreement shall be submitted for ratification or approval by all contracting parties in accordance with their own procedures.

Annex 2: Further information about the EFTA convention

EFTA Convention

The EFTA Convention establishes a free trade area between the partners by:

- Providing for free trade in industrial goods, including fish and other marine products;
- Improved market access for agricultural products;
- Establishing rules on customs and origin matters.

The Convention was revised in 2002 to include the free movement of persons, giving all nationals of EFTA states the right to the same treatment in respect of living, employment and working conditions in all EFTA states.

The free movement of persons also covers social security issues by establishing a system of coordination among the EFTA states. Switzerland was allowed a transitional period, so it may be possible that an acceding member could also introduce this provision over a period of time.

EFTA objectives

- a) to promote a continued and balanced strengthening of trade and economic relations between the Member States with fair conditions of competition, and the respect of equivalent rules, within the area of the Association;
- b) the free trade in goods;
- c) to progressively liberalise the free movement of persons;
- d) the progressive liberalisation of trade in services and of investment;
- e) to provide fair conditions of competition affecting trade between the Member States;
- f) to open the public procurement markets of the Member States;
- g) to provide appropriate protection of intellectual property rights, in accordance with the highest international standards.

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).

DOCUMENT 5

REDACTED [OUT OF SCOPE]

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**.

REDACTED [OUT OF SCOPE]

DOCUMENT 6

[REDACTED]

Constitutional Futures Division

Directorate for Constitution and Cabinet

February 2020

CONSTITUTIONAL FUTURES: EU ACCESSION

Purpose

This submission seeks your agreement to a proposed approach to an independent Scotland achieving EU membership, and your agreement to next steps.

Priority

Urgent

Background

1. Scottish Government policy is for an independent Scotland to become a member state of the EU. The approach to EU membership during the run-up to the 2014 referendum was predicated on the principle of “continuity of effect” such that notwithstanding the formal Treaty position vis-à-vis independent membership, Scotland would have continued to adhere to all EU obligations and continued to enjoy EU membership including comprehensive access to the EU single market.
2. As the UK is no longer a member state of the EU, that approach is no longer possible. Instead an independent Scotland would be required to re-join the EU from “outside”, and in all likelihood be subject to the accession procedure as provided for by Article 49 of the Treaty on European Union (TEU).
3. Following a Yes vote but pre-independence, Scotland would not yet be a formal (legally and constitutionally) independent country and it is doubtful that the Commission and Member states would agree that the first condition for submission of an application - being a European state - was met. So it will not be possible to negotiate EU accession to take effect on the date of legal independence. Consequently a proposition on EU accession requires a route map charting Scotland’s transition to membership of the EU from the date of independence to the date of EU accession.

Succinct description of the proposal

4. We envisage that an independent Scotland would join the EU through this process:
 - firstly by implementing a pre-accession association agreement, including participation in the Single Market and a range of EU programmes and initiatives.

 - and then becoming a full member upon the conclusion of formal negotiations and subsequent Treaty ratification.

[REDACTED]

7. The decision on how quickly Scotland will become a full member will be a matter for both the Scottish and EU member state governments. While some commentators have suggested it could take 3-4 years to negotiate accession, 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.
8. The central relationship proposed in the pre-accession agreement will be participation in the EU single market. One way of doing this will be for Scotland to “dock-in” to the pre-existing EFTA-EEA mechanisms. This does not mean an independent Scotland will seek to join EFTA for an interim period before applying for EU membership. Rather we would seek, with the agreement of the EFTA countries, to use, temporarily, their established structures. If this was not possible., we would seek a pre-accession agreement with the EU, including single market access, without any EFTA elements.

REDACTED

Meanwhile it sets out how – **first** to facilitate Scotland’s seamless transition to, and swift participation in, the EU single market with no interval between participation in the UK market and participation in the EU single market, in addition potentially to a wide range of EU policies and programmes, as soon as practicable after independence; **second** to provide sufficient time for Scotland to make all preparations necessary to assume the obligations of EU membership while still enjoying many of the benefits, and responsibilities, of access to the single market.

REDACTED

During the pre-independence preparation period Scotland would not, constitutionally, be in a position to apply for EU membership though we believe could negotiate a pre-accession agreement bridging the period between independence and EU membership. We recognise that an EU accession negotiation will take time.

IfG Paper: EU membership and the Anglo–Scottish border

DOCUMENT 8

29 March 2021: The Institute for Government (IfG) publishes a paper entitled: ‘Scottish Independence: EU Membership and the Anglo-Scottish border’.

The paper ‘examines the process that an independent Scotland would need to follow if it wished to rejoin the EU, the implications of this for trade across the Anglo–Scottish border, and the alternatives to full EU membership that Scotland might wish to consider’.

The full paper is here: [scotland_eu_border.pdf \(instituteforgovernment.org.uk\)](https://www.instituteforgovernment.org.uk/sites/default/files/2021-03/scotland_eu_border.pdf)

Key Conclusions in the paper

- The more integrated that an independent Scotland were to become with the EU, the greater the barriers to trade and cooperation that would arise on the island of Great Britain.
- The twin processes of Scotland seceding from the UK and acceding to the EU would be highly complex and separation negotiations with the UK would probably need to be concluded before accession negotiations with the EU could begin. The paper concludes that ‘Scotland’s path back to EU membership could take the best part of a decade’.
- In order to accede to the EU, Scotland would need to harmonise its laws with the EU rulebook, adjusting for any divergence that may have taken place since the end of the Brexit Transition Period.
- As an EU Member State, Scotland would regain the rights and responsibilities of EU membership – including re-joining the single market and customs union, EU funding programmes and the Common agriculture and fisheries policies.
- Scotland would also gain representation in the EU institutions including voting rights in the Council, appointment of a European Commissioner and a Judge in the European Court and representation in the Parliament.
- It is unlikely that Scotland would be able to negotiate the UK’s former opt-outs, therefore it would need to commit to joining the Euro and Schengen zone – at least in principle (although the paper notes that in practice it might be possible to avoid both of these outcomes noting that currently 8 Member States are not in the

IfG Paper: EU membership and the Anglo–Scottish border

Eurozone and citing Ireland’s decision to opt out of Schengen and maintain the Common Travel Area with the UK).

- Scotland would not benefit from the UK’s former budget rebate, and could expect overall to be a net contributor to the EU.
- The paper examines other options for closer integration between an independent Scotland and the EU including EEA membership, a Scotland-EU Customs Union and a Scotland-EU FTA with the aim of closer integration and accession over time.

Border Issues

- If Scotland became an EU Member State, trade between Scotland and England/Wales would be governed by the terms of the EU-UK Trade & Cooperation Agreement (TCA), which currently involves substantial friction on trade between Great Britain and the EU. (The paper does not speculate on how EU-UK trading arrangements may evolve over time or whether UK-wide easements may be negotiated in the context of the Ireland/Northern Ireland Protocol).
- As is the case for Northern Ireland, there would be a need for new border infrastructure to enforce EU single market and customs rules. VAT processes and rules of origin requirements would impact cross-border economic activity and create compliance costs for businesses, with a proportionately greater impact on SMEs.
- Scotland and the rest of the UK would retain control over their immigration policy, allowing them to grant each other favourable immigration/visa terms.
- If Scotland was required (or decided) to join the Schengen area, passport checks would be required on citizens from the rest of the UK entering Scotland and those without a long-term visa would not be permitted to stay in Scotland, or the rest of the Schengen area, for more than 90 days in any 180-day period.
- If an independent Scotland were to secure an opt-out from Schengen, it could choose to remain within the Common Travel Area, removing the need for any immigration controls and visa requirements on travel on the islands of Great Britain and Ireland, as well as the Crown Dependencies. The paper notes that the CTA has been recognised by the EU in the context of the Northern Ireland Protocol. (Article 3 of the Ireland/Northern Ireland Protocol states that the “United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the ‘Common Travel Area’), while fully respecting the rights of natural persons conferred by Union law”).

IfG Paper: EU membership and the Anglo–Scottish border

Accession Process and Timetable

- An independent Scotland would need to follow the standard accession procedure set out in Article 49 of the Treaty on European Union (TEU). All existing Member States must agree to a new country joining the EU and each can veto an applicant – including at the initial stage of becoming a candidate for EU membership.
- Article 49 of the Treaty on European Union states that “Any European State... may apply to become a member of the Union” by submitting a formal request to the Council. According to IfG, this implies that Scotland could not formally submit an application for membership until it had become an independent state i.e. a two stage process.
- The paper suggests that the Scottish Government might seek to pursue accession negotiations with the EU in parallel with separation negotiations with the UK Government. However, it notes that there is no precedent for the EU negotiating accession with a non-sovereign entity so a bespoke process would be required and such an approach would be highly complex and “could probably only happen with the consent of the UK Government”.
- While concluding that Scotland’s path back to EU membership (overall) could take the best part of a decade, the paper notes that the average amount of time for EU accession negotiations is 5 years, although Finland and Sweden’s accession took under 2 years as they had already adopted much of the necessary EU law through their membership of the European Economic Area.
- Commentators (Kirsty Hughes and Tobias Lock – “Independence, Scotland and EU Accession: Challenges Ahead” (Nov 2019) have argued that, from applying to join, through getting approval for talks, the talks happening, and ratification, could take four to five years.
- The IfG paper also notes that Scotland would need to put in place certain institutions to fulfil the economic and political requirements of EU membership (e.g. a full Treasury, a comprehensive system of taxation, a central bank, a debt management office and a competition agency).

Alignment

- The paper notes SG’s intention to keep pace with EU laws in devolved policy areas through Scotland’s Continuity Act but also suggests that the UK Internal Market Act could create incentives for Scotland to follow

IfG Paper: EU membership and the Anglo–Scottish border

England in diverging from EU standards, or risk putting its producers at a competitive disadvantage.

Alternative models for closer integration

- **EEA Membership:** The paper notes that Scotland could choose to join the EEA, granting it full access to the EU Single Market for goods and services and enabling free movement of people. In doing so it would be possible for Scotland to remain outside the EU's Customs Union (thus avoiding customs checks on the Anglo-Scottish border) and outside the EU's common fisheries and agriculture policies. However, EEA membership would still lead to trade frictions with the rest of the UK as products such as agri-food goods would need to be checked for compliance with EU single market rules. The paper also notes that EEA members are obliged to accept large swathes of EU law without having any representation in the European commission, parliament or council.
- **Customs Union:** The paper argues that a Scotland-EU customs union without EEA membership would carry many of the disadvantages of EU/EEA membership with few of their advantages since Scotland would be obliged to impose full EU customs checks on its border with England whilst Scottish goods exports would still be subject to regulatory checks (such as Sanitary & Phytosanitary checks) on entry into the EU.
- **Scotland – EU FTA:** the paper notes that a hybrid of a traditional Free Trade Agreement and an accession process could be an option if an independent Scotland wished to accede to the EU over time whilst initially choosing to remain in a customs union with the rest of UK.

DOCUMENT 10

The proposal and key choices:

Scotland will apply to become a member of the EU on the date of independence, under the Article 49 procedure. Assumption is that a formal application could not, legally, be made until independence – therefore there will be a gap between leaving the UK and becoming a full member of the EU.

The gap will exist for two key reasons:

- a Treaty of Accession, including all areas where we would wish derogations or transitional arrangements, will take time to conclude and be ratified by all EU member states.
- There may be areas in which Scotland, upon independence, is not ready to take on the full requirements of EU membership. Key among those is the currency question.*

To bridge that gap following an affirmative referendum – in the period before independence, Scotland will seek to negotiate with the EU a Pre-Accession Agreement to take effect as soon as possible after the date of independence. This could take the form of a broad-ranging “Association Agreement”, though there are potential consequences for national ratification requirements.

[REDACTED]

Ideally the Pre-Accession Agreement will last from leaving the UK market and customs union until the date of Scotland’s EU accession. There may be room to extend the relationship as the accession process proceeds – incentives for progress are envisaged in the Commission’s recent proposal for a revised approach to accession.

- a. Timeframes: we would aim to frame a proposal that achieves independence as soon as feasible while protecting the economy and citizen safety; and that achieves EU accession as soon as feasible thereafter based on readiness to take on the obligations of membership. **How firm – or otherwise - do we want to be in the proposal on how long different periods might last?**

[REDACTED]

DOCUMENT 11

ANNEX B: The process of joining the EU

The diagram below outlines the process of joining the EU based on Article 49 of the Treaty on the European Union.

This structure, based around the chapters (and where relevant the use of opening and closing benchmarks) ensures that targets are well known to everyone, and is considered to bring a sense of discipline to the process.

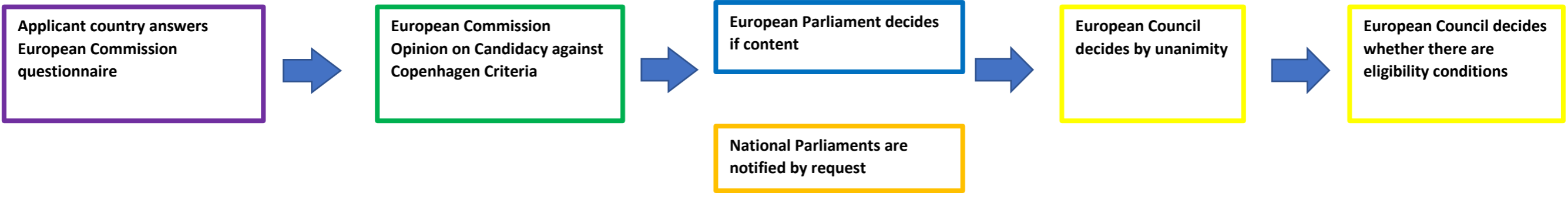
Note that benchmarks, which were introduced by the Commission during accession talks with Croatia, are not always required.

Opening benchmarks are conditions that must first be met prior to opening negotiations. These are applied in areas where the screening phase indicates that considerable efforts would be required to achieve alignment with the *acquis*, for example the absence of basic legislation.

Closing benchmarks are conditions that are required to be fulfilled before a chapter can be closed. Negotiations are considered concluded only once all 35 chapters are closed and confirmed by the European Council.

The benchmarks, which are legislation, action plans, internal procedures or specific implementation actions, are designed to provide clear guidance and a framework for reforms, as well as allow the EU to enhance monitoring of candidate countries' progress. Of the 35 chapters of the *acquis*, Croatia had 23 opening benchmarks in 11 chapters and 104 closing benchmarks in 31 chapters. Most benchmarks had sub-categories and Croatians estimated that they had to fulfil a total of 400 conditions.

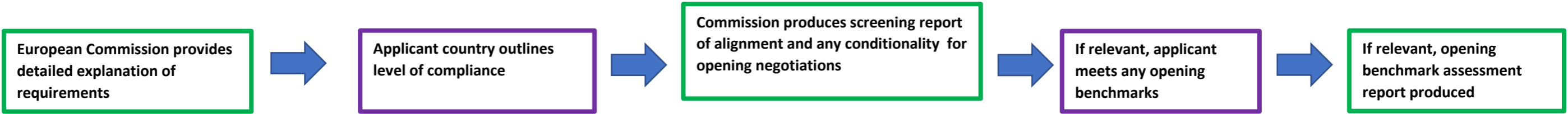
1. Application for membership



2. Candidate country status



3. Opening of negotiations



4. Negotiations on EU acquis



5. Closing of negotiations



6. Accession Treaty



DOCUMENT 12

From:[REDACTED]
International Futures, External Affairs

19 February 2020

[REDACTED]

1. To provide you with a summary of the recent European Commission communication on the EU accession process. This does not alter the requirements for EU membership but, if agreed, is likely to have at least some influence on the process of any subsequent accession process.

[REDACTED]

A **more dynamic process**: the 35 chapters will be clustered together into 6 thematic groups (see Annex B), ensuring early alignment and integration. The cluster on fundamentals (rule of law, economic criteria and public administration reform) will take a central role and sufficient progress will need to be achieved before other clusters can be opened;

[REDACTED]

Note that these proposals are focused on how the accession process is carried out – it does not change the requirements for EU membership. However, whilst we still need to understand how these proposals would work in practice there are potentially useful elements for a future independent Scotland's re-accession to the EU, and the potential to see rapid return in areas of close alignment. In particular the proposal to accelerate integration into individual EU policies and programmes, where EU requirements have been met (note that the opposite is also proposed, with a lack of acceptable progress leading to negotiations potentially being suspended and reduced funding and involvement in programmes).

[REDACTED]

These proposals to enhance the EU accession process for the Western Balkans will be discussed at a summit in May. They do not alter the requirements for EU membership but, if agreed, are likely to have at least some influence on the process of any subsequent accession process.

[REDACTED]

Countries wishing to join the EU usually issue 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: (i) political stabilisation and economic development, (ii) promotion of regional cooperation, and (iii) eventual membership of the EU. During this phase these potential candidate countries are given financial assistance, trade concessions etc.

[REDACTED]

At present chapters 23 and 24 on rule of law issues are opened early in negotiations and only closed at the end of the process. This front-loading of the rule of law is designed to allow candidate countries maximum time to establish the necessary legislation, institutions and solid track records of implementation, and to ensure that reforms are sustainable and irreversible.

[REDACTED]

At this stage, any transitional arrangements that will apply to the candidate after accession must be considered and agreed. Transitional arrangements are specified periods (usually between two and seven years) during which a new member state does not have to meet the *acquis* in full in a particular area, or not all areas of the *acquis* apply to a new member state either to allow the acceding country a period of time to adjust or conversely to allow the existing member states time to adjust to an enlarged EU (for example on free movement of workers).

[REDACTED]

DOCUMENT 13

From:[REDACTED]
International Futures, External Affairs

18 December 2019

Cabinet Secretary for Government Business and Constitutional Relations

REQUIREMENTS FOR EU MEMBERSHIP

Purpose

[REDACTED]

In considering the list of areas for further work provided in paragraph 14, it is important to note that:

- i) an independent Scotland will be beginning its journey from a novel and enhanced starting point; others have started the process from much lower readiness and have achieved membership. Moreover, institutions that Scotland sets up upon independence will be aligned with EU requirements by design from the outset;
- ii) each member state's accession journey and conditions of membership differs, and the experience of previous enlargements demonstrates an element of flexibility in how closely a new member state is required to meet all obligations of membership, other than those directly impacting on the European single market, at the time of accession. Accordingly Scotland's specific membership negotiations will not directly replicate any other member state's situation;
- iii) states which have more recently joined the EU have also benefitted from temporary transitional arrangements, which take into account the political and economic circumstances of the country concerned and allow them to progress towards fully achieving the obligations of the EU even after becoming a member. For example Croatia joined the EU in 2013 (enjoying the full benefits of membership), received the Commission's backing to join the Schengen Area in 2019, and aims to join the euro by 2025;

[REDACTED]

the timing of when to submit a declaration of intent would be for an independent Scotland to decide. How long an accession process takes thereafter will depend on the initial assessment of Scotland's compliance with the EU *acquis*, how quickly Scotland meets any stipulated criteria, what transitional derogations are sought and granted, and the receptiveness of EU member states and the European Parliament to Scotland's candidacy.

[REDACTED]