



## Scotland, independence and the EU

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Authors: Arabella Thorp and Gavin Thompson

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If Scotland became independent, would it automatically remain a member of the European Union (EU) – or would it have to go through the whole accession process for new Member States, either alone or alongside the rest of the UK?

This is a major question in the independence debate, and one to which there is no clear answer. There is no precedent for a devolved part of an EU Member State becoming independent and having to determine its membership of the EU as a separate entity, and the question has given rise to widely different views.

There are at least three different possibilities under international law for a newly-independent Scotland: continuation and secession (the rest of the UK would retain its treaty obligations and membership of international organisations, but Scotland would not); separation (both entities would retain them); and dissolution (both would lose them).

Whatever the position under general international law, a decision on Scotland's status within the European Union is likely to be a political one. If all the EU Member States agreed, then Scotland could continue automatically as a Member State (pending negotiations with the other member states on details of membership, including the number of MEPs to represent Scotland). On the other hand, Member States with their own domestic concerns about separatist movements might argue that Scotland should lose its membership on independence, and hold up or even veto its accession.

EU Member States, with the exception of Denmark and the UK, are expected to join the single currency if and when they meet the criteria. Five of the twelve states joining the EU since 2004 have gone on to join the euro. Whether Scotland joined the euro would have implications for its post-independence monetary policy, and the size of its liability for loans provided to countries facing sovereign debt problems. Finally, Scotland is likely to be a net contributor to the EU Budget (in other words it will pay out more than it receives in structural funding and payments under the Common Agricultural Policy), but the size of this contribution will depend critically on whether it benefits from an abatement (rebate) on the same terms as does the UK currently.

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# 1 Three possibilities under international law

The whole question of the succession of states is a complex and disputed legal area.<sup>1</sup> There are at least three different possibilities under general international law for a newly-independent Scotland: (1) continuation and secession (the rest of the UK would continue its treaty obligations and membership of international organisations, but Scotland would not); (2) separation (both entities would retain them); and (3) dissolution (both would lose them). These are outlined below.

## 1.1 Continuation and secession

In general, under customary international law, when a state breaks up, treaty obligations and membership of international organisations pass to the continuing state – if it is possible to discern one. The existence of a continuing state is, as a general rule, determined by the state itself and in light of the opinions of the international community and relevant international organisations. Secession of territory from an existing state will not affect the continuity of the latter state, even though its territorial dimensions and population have been diminished. The territory that has seceded will be a completely new state, free from the treaty rights and obligations applicable to the predecessor state.<sup>2</sup> For example, it seems to be accepted that India was the same legal entity as British India, and Pakistan was a totally new state.<sup>3</sup>

It may be that the international community is starting to move towards a presumption of continuity, so that the seceding territory is bound by at least some of the predecessor state's obligations. But this is not yet clearly established.<sup>4</sup>

If a continuing state were identified in the event of Scottish independence, it would almost certainly be what was left of the UK without Scotland. This would leave Scotland as a new state, without the treaty obligations and membership of international organisations that it had had as part of the UK.

## 1.2 Separation

The situation of separating a voluntary union of two recognised states is different. It appears to give rise to a presumption in favour of continuity of treaties with regard to each component part, though this is subject to expressed intention to the contrary.<sup>5</sup> The same can apply to membership of international organisations: for example, when Syria and Egypt merged in 1958 to form the United Arab Republic, the latter was treated as a single member of the United Nations, while upon the dissolution of the merger in 1961, Syria simply resumed its separate membership of the organisation.<sup>6</sup>

## 1.3 Dissolution

If instead it is considered that a state is entirely dissolved and new states are created, both or all such states will have to apply afresh for membership of international organisations. This was the case in the UN when Czechoslovakia was dissolved. There was no continuing

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<sup>1</sup> The German Federal Supreme Court noted in the *Espionage Protection* case that “the problem of state succession is one of the most disputed areas of international law”. Case No. 2 BGz 38/91, 94 ILR, pp68, 77-8

<sup>2</sup> The [Vienna Convention on Succession of States in respect of Treaties](#) takes a slightly different approach; but the UK is not a party to this convention.

<sup>3</sup> DP O'Connell, *State Succession in Municipal Law and International Law*, 1967, vol. II, pp184-5

<sup>4</sup> Malcolm N Shaw, *International Law*, 5<sup>th</sup> edition, 2003, p881

<sup>5</sup> Malcolm N Shaw, *International Law*, 5<sup>th</sup> edition, 2003, p884

<sup>6</sup> DP O'Connell, *State Succession in Municipal Law and International Law*, 1967, vol II, pp197-8

Czechoslovak state, and both the Czech Republic and Slovakia applied for membership. But the UK took the position that treaties and agreements in force to which the UK and Czechoslovakia were parties remained in force as between the UK and the successor states.<sup>7</sup>

#### **1.4 Who would decide?**

There is no clear method of determining which of these possibilities would apply to an independent Scotland. It could be negotiated between the parties before independence. If there were a dispute, the International Court of Justice could be called upon to give an opinion or a judgment.<sup>8</sup>

## **2 What is the position under EU law?**

### **2.1 No provision in the EU Treaties for succession of states**

Whatever the position under general international law, it is by no means clear whether or not Scotland would retain membership of the EU automatically if it gained independence.

Nothing in the EU Treaties sets out what would happen in the event of part of a Member State becoming independent. Articles 4.2 and 5.3 of the consolidated EU Treaty incorporating the Lisbon Treaty specifically mention local and regional government for the first time, but do not concern succession or EU membership.

Given the legal uncertainties, it is likely that Scotland's relations with the EU in such a situation would therefore be determined politically.

Professor John Usher has suggested that the Lisbon Treaty might indirectly make it easier for an independent Scotland to remain a member of the EU:

As someone who spent a total of 14 years working in Scotland, I had several discussions with SNP politicians as to whether Scotland would automatically remain a member of the EU if it became independent. Without getting involved in the niceties of State succession, a simple answer used to be that a new Treaty would have to be negotiated to deal with issues eg of representation and voting rights. However, it was suggested in the first section of this Evidence that the Reform Treaty considerably reduces the need for future Treaty amendments with regard to these issues, by removing specific numbers from the Treaty texts. To that extent, the Reform Treaty may be said to strengthen the arguments in favour of Scotland automatically remaining a member of the EU if it were to become independent.<sup>9</sup>

If Scotland were to become independent and the rest of the UK remained a Member State, it is likely that the EU treaties would need to be renegotiated whether or not Scotland were to join the EU automatically. The change in population in the existing Member State (the rest of the UK) might lead to other Member States asking for a review of voting weights in the Council of the EU (Council of Ministers) and of the quotient of MEPs:

The creation of a new Scottish state would – if only formally – change the conditions for operation and application of the institutional and financial provisions of the

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<sup>7</sup> See the letters sent by the UK Prime Minister to the Prime Ministers of the Czech Republic and Slovakia on 1 January 1993, UKMIL, 65 BYIL, 1994, p586 ff

<sup>8</sup> A recent example of the ICJ's involvement in independence issues was its Advisory Opinion on Kosovo's declaration of independence:

<sup>9</sup> [Memorandum by Professor John A Usher, Professor of European Law and Head of the University of Exeter School of Law, to the House of Lords Select Committee on the Constitution House of Lords, 19 March 2008](#)

European Union. This cannot be over-emphasised: independence would be adding a new Member State to the EU and this would require formal treaty changes according to the specific rules of EU accession rather than the general and vague rules of international law on succession to multi-lateral treaties. Negotiations would not be about the principle of membership but about the practicalities and details involved. To illustrate, the European Union is premised upon the existence of a particular number of Member States. Voting rights are weighted and numbers of representatives are allocated on the basis of the size of the state. Amendments to those provisions require negotiation of an amending treaty and its subsequent ratification by all the existing Member States and by the newly acceding state.<sup>10</sup>

At the moment the UK (population 60 million) has 29 votes in the Council and 73 seats in the European Parliament. Both Denmark (5 million) and Finland (5 million) have proportionately much larger representation: 7 votes and 13 seats each. Scotland's population is also about 5 million.

## 2.2 Enlarging without accession

The EU has in the past enlarged without accession. This happened when the former East Germany became part of the European Communities (EC). There was no formal application process but a process of absorption.<sup>11</sup> Several agreements were quickly ratified by the Member States to allow for the increased membership and transitional provisions for the East German lands. Institutional and other necessary provisions relating to the enlargement were later adopted and incorporated as Treaty amendments. The former Communist country's economy was boosted by extra German and EC funding, but the overall responsibility fell to the German government.

However, in that case there was no increase in the number of EU Member States.

## 2.3 Leaving the EU

Those who wish to demonstrate that a newly independent Scotland would not automatically find itself outside the EU have sometimes cited the example of Greenland, the only country to have left the EC. For them, the fact that Greenland's exit from the EC required protracted negotiations implies that Scotland could not be automatically ejected.

Greenland secured autonomy from Denmark in 1979 and voted to withdraw from the European Union in 1982. But it was not until February 1985, after difficult and protracted negotiations, that Greenland formally left the EU and re-associated itself with the EU through the [overseas countries and territories \(OCT\)](#) formula.<sup>12</sup>

However, Greenland was not independent: the situation was more analogous to a vote by Scotland (or Yorkshire) to seek to leave the EU whilst remaining part of the UK. Furthermore, the negotiations were not simply about Greenland leaving but about the terms on which it could transfer to OCT status.<sup>13</sup>

The Greenland example does show that the Commission can respond pragmatically, "adapting EC legal theory to the economic and geographic realities of Greenland, rather than

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<sup>10</sup> JE Murkens, P Jones and M Keating, *Scottish Independence – A Practical Guide*, 2002, p119

<sup>11</sup> Provision had been made in a Declaration to the original EC Treaty that it applied to all Germans as defined by the Basic Law, which included the whole territory of Germany, East and West, in its remit.

<sup>12</sup> [OCT status](#) is primarily designed for the non-European colonial possessions of member states, allowing duty free entry of goods from the OCT into the EU in return for partial reciprocity from the OCT.

<sup>13</sup> David Sinclair, *Issues Around Scottish Independence*, September 1999, p15

rigidly applying various treaty provision".<sup>14</sup> The Member States accepted Greenland's modified status despite the fact that the EC Treaties did not really make provision for such a change in status. On the other hand, there can be no guarantee that a claim by a newly independent Scotland would be met with the same flexibility.<sup>15</sup>

The Treaty of Lisbon does now provide for Member States to leave the EU if they want to. Article 50 of the *Treaty on European Union* (TEU), as amended by the Lisbon Treaty, sets out a procedure for a voluntary withdrawal from the Union according to a State's "own constitutional requirements".<sup>16</sup>

But leaving the EU would not mean a simple return to the status quo before the UK joined the then European Economic Community (EEC) in 1973. EU law is part of Scots law and its enactment has given Scottish people, companies and public authorities certain rights and obligations; changing or removing them would not be straightforward. A number of complex issues would need to be resolved through negotiations with the other EU Member States. These would include a new relationship with the Common Agricultural and Common Fisheries Policies, revised trade rules with EU Member States and with third parties, and changes to the arrangements for the free movement of workers throughout the EU and EEA areas, to name but a few.

## 2.4 The positions of the UK Government and the Scottish Government

The UK Government has reportedly obtained legal advice that an independent Scotland would be considered a new state rather than a successor state, and that it would lose EU membership on independence.<sup>17</sup> The advice apparently added that the UK's derogation from the single currency (see below) would therefore not apply to an independent Scotland.

The previous Government took the same view:

If Scotland were to become independent from the UK, the rest of the UK would remain part of the EU, but changes in arrangements would have to be agreed, for example, to reflect the change in the size of the population of the UK.<sup>18</sup>

The Scottish Government has refused to disclose the legal advice it has received on the issue.<sup>19</sup> The SNP administration has maintained that an independent Scotland will automatically be a member state of the EU, apparently on the basis of separation of the union (meaning that both Scotland and the rest of the UK would retain their international obligations and membership of international organisations). This would require the separation to be voluntary and agreed. Scottish Ministers have apparently suggested that membership of the [European Free Trade Association \(EFTA\)](#) could be an alternative to full EU membership, and that an independent Scotland would hold a referendum on joining the euro.<sup>20</sup>

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<sup>14</sup> K Mason, "Greenland – withdrawal from the EEC", *Georgia journal of International and Comparative Law*, 13 (193) 865-76 at 874

<sup>15</sup> David Sinclair, *Issues Around Scottish Independence*, September 1999, p16

<sup>16</sup> See Vaughne Miller, *In brief: leaving the European Union*, House of Commons Library Standard Note 6089, 20 October 2011

<sup>17</sup> "Independent Scotland ' would have to join the euro'", *Telegraph*, 26 October 2011

<sup>18</sup> [HC Deb 19 Feb 2007 c388W](#)

<sup>19</sup> See "SNP urged to publish secret legal advice on separate Scotland EU membership", *Telegraph*, 10 September 2011

<sup>20</sup> "SNP urged to publish secret legal advice on separate Scotland EU membership", *Telegraph*, 10 September 2011

## 2.5 The European Commission's position

The European Commission's official position is that it is not customary for it "to state its views on matters which, as things stand, are purely hypothetical".<sup>21</sup>

However, the European Commission did comment on the possibility of a region becoming independent in response to a European Parliamentary Question from Welsh MEP Eluned Morgan in 2004. Ms Morgan asked whether a newly independent region would have to leave the European Union then apply for membership afresh, and whether an application of this type would require a re-writing of the Treaties and the unanimous support of the existing Member States. The Commission's answer was that the newly independent state would be outside the EU and would need to apply for membership of the EU in the same way any other non-member:

The European Communities and the European Union have been established by the relevant treaties among the Member States. The treaties apply to the Member States (Article 299 of the EC Treaty). When a part of the territory of a Member State ceases to be a part of the state, e.g. because that territory becomes an independent state, the treaties will no longer apply to that territory. In other words, a newly independent region would, by the fact of its independence, become a third country with respect to the Union and the treaties would, from the day of its independence, not apply anymore on its territory.

Under Article 49 of the Treaty on European Union, any European State which respects the principles set out in Article 6(1) of the Treaty on European Union may apply to become a member of the Union. An application of this type requires, if the application is accepted by the Council acting unanimously, a negotiation on an agreement between the Applicant State and the Member States on the conditions of admission and the adjustments to the treaties which such admission entails. This agreement is subject to ratification by all Member States and the Applicant State.<sup>22</sup>

## 2.6 An outline of the accession process

If Scotland were to lose EU membership upon independence, Scotland could technically be in the same position as any other state aspiring to become an EU Member. Unless Member States agreed otherwise, it would have to follow the normal accession process, outlined below, despite the fact that it already complies with EU law and policy.

### **Formal requirements**

In that case, under Article 49 of the [Treaty on European Union](#) (TEU), it would be entitled to apply for membership, as long as it respected:

- the principles set out in Article 2 TEU: human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities; and
- the '[Copenhagen Criteria](#)' (set out by the Copenhagen European Council in June 1993), which are:
  - stability of institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities;
  - a functioning market economy and the ability to cope with competitive pressure and market forces within the Union;

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<sup>21</sup> This official position was in response to a European Parliamentary Question (H-1086/06) by Catherine Stihler MEP. The response was issued on 13 February 2007 (see her subsequent question of [5 June 2007](#)).

<sup>22</sup> [Answer by Romano Prodi, 1 March 2004](#)

- the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union and adoption of the common rules; and
- the adoption of the *acquis communautaire* (the standards and policies that make up the body of EU law).<sup>23</sup>

The final test is the EU's '[absorption capacity](#)'. The idea here is that the integration of new members should not prevent further integration across EU institutions and policies, and that enlargement is supported by public opinion both in the Member States and the applicant state.

The EU Treaties would need to be amended to include the new member state in relevant Articles and new institutional provisions.

Decisions on EU membership must be agreed unanimously by all Member States. It is worth considering that if there is a continuing UK it would have a vote on an independent Scotland's accession application, as would other Member States with their own internal regional independence issues, such as Spain.

### ***Evaluation of the application***

When a state applies for membership, there are several stages in evaluating the application:

1. Screening process to ascertain the differences between national legislation and the *acquis communautaire*
2. Unanimous decision by the European Council to open formal negotiations
3. Opening benchmarks set for negotiating 'chapters' of the *acquis communautaire*
4. Closing benchmarks set for provisional closing of chapters
5. Close of negotiations
6. Accession treaty (listing all transitional arrangements and deadlines, as well as details of financial arrangements and any safeguard clauses) agreed by the Council, the Commission and the European Parliament
7. Member states ratify Accession Treaty according to domestic procedures

The Commission issues regular progress reports (at least annually) on each candidate country and potential candidate country. It takes into account information provided by the candidate countries themselves, assessments made by the Member States, European Parliament reports and resolutions, reports from other international organisations and international financial institutions, and progress made under existing association and other agreements. The Commission reports usually include a forward-looking analysis of expected progress.

### ***Timescale***

The accession process can take anything from four years (Sweden) to decades and counting (Turkey).

One factor determining the rate of progress through the accession process is how quickly the candidate country can demonstrate that it has complied with all of the EU's conditions. In practice, if a state that had gained independence from an existing Member State chose to

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<sup>23</sup> See Vaughne Miller, [The EU's Acquis Communautaire](#), House of Commons Library Standard Note 5944, 26 April 2011

retain the laws and standards of that Member State, it would probably be able to comply fairly swiftly with the vast majority of membership conditions.

However, perhaps more important are political considerations: there needs to be political will on the part of existing Member States to endorse and advance a candidate's application. Member States might decide, for example, that a new state which could show it had fulfilled all conditions of membership could 'jump the queue' and push ahead of existing candidates (as looks likely with Iceland). On the other hand, existing Member States might resist a swift acceptance of a newly-independent state, particularly if they had regions of their own which were pushing for independence.

## **2.7 Could a new state opt out of some provisions?**

If the new state wished to remain outside certain agreements, such as the Common Fisheries Policy or the Euro, this would have to be secured by negotiation during the accession process. In practice, the new state would be limited in what it could opt out of. Every candidate is obliged to adopt the *acquis communautaire*, the body of EU law and Court of Justice case law. While opt-outs on specific issues can be negotiated (and have been in the past), candidate states that are not willing to sign up to basic, fundamental EU policies are more likely to encounter problems affecting their membership aspirations.

The terms of entry of a new state would have to be set out in an accession treaty and agreed unanimously by all parties (existing Member States and the applicant state) and ratified according to their respective constitutional requirements.

## **3 The euro and other economic implications**

### **3.1 Euro membership**

The terms— including euro membership – of each accession are negotiated separately, within the broad requirements set out above. In the last two EU enlargements (2004 and 2007), the new member states were required to adopt the euro if and when they meet the criteria set, but were given a derogation from adopting the single currency.<sup>24</sup> Of the 2004 and 2007 accession states, Cyprus, Estonia, Malta, Slovakia and Slovenia have thus far adopted the euro. Of these, Slovenia was the quickest to meet the convergence criteria: having joined in May 2004, it adopted the euro at the start of 2007

The UK and Denmark currently have a special status which allows them to decide when (and if) they wish to adopt the euro as their currency. This position was set out in the Maastricht Treaty in 1992. All other current European Union Member States are required to adopt the euro when they meet the criteria. It is worth noting, however, that Sweden has yet to adopt the euro, and although it is technically obliged to join the single currency it seems unlikely that it will happen in the near future.

If an independent Scotland lost its EU membership, it would also lose the current opt-outs, unless Member States agreed that it could keep them. Professor Andrew Hughes Hallet argues that all new members of the EU are required to join the euro eventually and it is not clear that Scotland would have the right to inherit the UK's current euro opt-out.<sup>25</sup>

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<sup>24</sup> More information on the convergence criteria can be found on [this page](#) of the ECB website.

<sup>25</sup> Andrew Hughes Hallet, "Optimal monetary arrangements for Scotland: adopt which money and why?", in Professor Sir Donald Mackay (ed), *Scotland's Economic Future*, 2011

If it were recognised as one of two successor states to the UK and thereby automatic kept membership of the EU, it might be that both states could retain the opt-outs that they had enjoyed when they were part of the UK. This would probably still require the political agreement of all the other Member States.

### 3.2 The EU Budget

The critical questions here are whether Scotland would be a net contributor or beneficiary of the EU Budget, and if so by how much; that is, whether its payments would exceed receipts from structural funding and common agricultural policy (CAP) payments. Since, by the time it joined, Scotland's budget contributions and receipts would probably be determined by the 2014-21 financial framework, during which spending priorities and contribution size will be different from the present (2007-13) framework, it is not entirely appropriate to predicate its likely payments and receipts on the present situation. As an indication, however, CAP and structural fund receipts in Scotland and England, in £m and £ per capita, are shown in the table below. Scotland receives rather more per capita from the EU Budget, particularly through the Common Agricultural Policy.

#### Indicative<sup>a</sup> receipts from EU Budget

			2006/07	2007/08	2008/09
<b>£m</b>	Scotland	<i>Structural funding</i>	201	153	103
		<i>Agricultural funding</i>	464	491	512
	England	<i>Structural funding</i>	1,139	1,087	659
		<i>Agricultural funding</i>	2,199	1,840	1,992
<b>£ per capita</b>	Scotland	<i>Structural funding</i>	39	29	20
		<i>Agricultural funding</i>	89	94	98
	England	<i>Structural funding</i>	22	21	13
		<i>Agricultural funding</i>	43	36	39

<sup>a</sup> figures refer to expenditure made by administrations on EU-supported projects. This expenditure is reimbursed at regular intervals throughout each financial year, subject to subsequent corrections that may be made as a result of audits undertaken by the European Commission.

Source: HMT *Consolidated statement on the use of EU funds in the UK* (various edns.)

However, Scotland's net contribution will depend critically on how we treat the UK's abatement (rebate) on its EU Budget contributions. Given that the UK is unique among Member States in benefitting from an abatement on its contributions of this kind, it is not reasonable to assume that Scotland would benefit from similar treatment. As shown in the tables on the right, which give a back-of-the-envelope calculation of Scotland's implicit gross and net budget contribution in 2008/09, per capita net contributions are £92 with no abatement, and £16 with an abatement in proportion to Scotland's economic size.

#### EU Budget contributions and receipts, 2008/09 - indicative disaggregation, no Scottish abatement<sup>a</sup>

	UK	England	Scotland
Gross (£bn)	13.2	11.3	1.1
<i>Less abatement (£bn)</i>	5.6	4.8	0.0
<i>Less public sector receipts (£bn)</i>	4.6	2.7	0.6
Net (£bn)	3.0	3.9	0.5
Net per capita (£)	50.0	57.1	92.4

<sup>a</sup> Gross contributions are disaggregated using GVA weighting; Scotland is assumed to get no abatement; public sector receipts are disaggregated using HMT Consolidated Statement on use of EU Funds

#### EU Budget contributions and receipts, 2008/09 - indicative disaggregation, with Scottish abatement<sup>b</sup>

	UK	England	Scotland
Gross (£bn)	13.2	11.3	1.1
<i>Less abatement (£bn)</i>	5.6	4.8	0.4
<i>Less public sector receipts (£bn)</i>	4.6	2.7	0.6
Net (£bn)	3.0	3.9	0.1
Net per capita (£)	50.0	57.1	15.7

<sup>b</sup> Gross contributions and abatement are disaggregated using GVA weighting; public sector receipts are disaggregated using HMT Consolidated Statement on use of EU Funds

Source: HMT *Public Expenditure Statistical Analyses 2011*; HMT *Consolidated Statement on the use of EU Funds in the UK*; ONS *mid-year population estimates*

### 3.3 The European Central Bank (ECB)

Scotland’s role in the European monetary system will depend almost entirely on whether it joins the euro. The majority of the ECB’s capital comes from the eurozone members’ national central banks. The EU’s 10 non-euro area central banks provide smaller amounts ‘to contribute to the operational costs incurred by the ECB in relation to their participation in the European System of Central Banks’: the Bank of England’s paid-up capital is €59m, a 1.1% share of the total ECB capital. Importantly, however, non-euro area central banks, unlike their euro-area counterparts, are not liable to fund any losses of the ECB (nor are they entitled to share in its profits). This is because they are not shareholders of the ECB, as defined by its statute.<sup>26</sup>

Scotland’s capital subscription to the ECB would be around €74m were it to join the euro, and around €4m while it remained outside it.

**Scotland - indicative capital subscription to ECB**

Share of GDP in EU	0.98%
Share of population in euro area	1.04%
Capital share (euro area, adjusted)	1.4%
Capital subscription (euro area), €m	73.8
Capital share (non-euro EU, adjusted)	3.2%
Capital subscription (non-euro EU), €m	3.9

Sources: ECB.int; ONS Regional GVA; ONS mid-year population estimates; Eurostat

Obviously, on joining the euro, Scotland would cede control of its monetary policy (not that it has any control over it now) and its nascent national central bank (NCB) would join the European System of Central Banks. Its governor would have a seat on the ECB Governing Council along with each of the other euro-area states, and except under certain circumstances, this would carry equal weight to all the others.<sup>27</sup> The relationship between the ECB and NCBs is set out in the [Statute of the ECB and ESCB](#).

Since the eurozone sovereign debt crisis, the ECB has engaged in the purchase of sovereign debt of certain beleaguered countries as part of its Securities Markets Programme. It has also acted as lender of last resort to eurozone banks that have lost access to the interbank funding market. The ECB has not thus far experienced any losses from these activities, and it is not included in the 50% ‘haircut’ to be applied to Greece’s private sector creditors.<sup>28</sup> Any losses incurred by the ECB in respect of its activities can theoretically be met by simply creating money, although in practice it is likely that the euro-area countries will be obliged to shoulder at least some of the loss, in proportion to their capital subscription.

### 3.4 Loans facilities

In the wake of the eurozone sovereign debt crisis, the EU and eurozone created two facilities, the European Financial Stabilisation Mechanism (EFSM), and the European Financial Stabilisation Facility (EFSF) to provide loans to countries which had lost access to

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<sup>26</sup> See, for instance, ECB [Capital subscription for non-euro area central banks](#)  
<sup>27</sup> For decisions related to capital subscriptions and the handling of ECB losses, votes are weighted by capital subscription. For more details, see [Article 10](#) of the Statute of the ECB and ESCB  
<sup>28</sup> European Council [Euro summit statement](#), 26 Oct 2011

funding at sustainable rates on the open market. Both facilities are due to be replaced by a permanent mechanism, the European Stability Mechanism (ESM), probably by mid-2013. Were Scotland to join the euro, it is likely that it would become party to the ESM, providing funding guarantees in proportion to its capital share in the ECB. Based on its present proposed size, this would amount to roughly 1.4% of €700bn, or €9.8bn.<sup>29</sup>

#### **4 Further reading**

Professor Sir Donald Mackay (ed), [Scotland's Economic Future](#), 2011

JE Murkens, [Scotland's Place in Europe](#), February 2001

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<sup>29</sup> For more on the ESM, see the [Treaty Establishing the European Stability Mechanism](#)