Scotland's European Relations:
Where Next?

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Executive Summary

This paper analyses the range of Scotland's relationships with the EU, and the Scottish government's European strategy, in the context of both the new post-Brexit reality and of continuing constitutional tensions.

Scotland, alongside the rest of the UK, is now outside of the EU and no longer in its single market or customs union (with Northern Ireland having its own differentiated status). The structure for Scotland's relationships with the EU and its member states is provided mainly but not only by the EU-UK Trade and Cooperation Agreement and the Withdrawal Agreement. Despite Brexit, the EU remains, by far, the largest trade partner both of the UK and of Scotland. And Scotland is still a European country – and one that voted against Brexit in 2016.

The May 2021 elections to the Scottish Parliament once again resulted in a government led by the Scottish National party (SNP). The SNP with 64 seats was one seat short of an overall majority but, with 8 seats going to the pro-independence Scottish Greens, there is a clear majority for independence in the EU, and for holding another referendum on independence in the Scottish parliament. Yet the Scottish public are currently divided 50:50 on independence.

Brexit has impacted in a myriad of damaging ways on Scotland's EU relations but nonetheless there are still a wide and diverse range of economic, political, cultural, social and other relationships. Businesses, unions, NGOs, educational and research bodies, cultural organisations and groups all still have important EU networks and relationships but face increased complexities in navigating these. Scotland, like the rest of the UK, is now an outsider looking in with less access, influence and voice.

Just over half of Scotland's international exports go to the EU and European Economic Area – it is Scotland's largest export market. But there will be a growing impact of the new barriers put in place since January this year through the Trade and Cooperation Agreement (TCA). There are also, for now, unanswered questions as to how and to what extent Scottish interests and politicians will be represented within the TCA's governance structures.

The Scottish government has a rather distinct European stance compared to that of the UK government. It was opposed to Brexit, it aims to remain aligned to EU laws in devolved areas (something that may run up again the UK's Internal Market Act), and it has the overarching goal of independence in the EU. As a sub-state, Scotland has no foreign policy but through a range of devolved areas – environment, health, education, culture, economy and more – Scotland has a clear para-diplomacy and European strategy, one not atypical for sub-states and regions (both within and beyond the EU). That European strategy focuses on three broad areas: environment and net zero, well-being, and innovation. The Scottish government also has four main offices in the EU – in Brussels, Berlin, Dublin and Paris and is looking to open more.

This para-diplomacy is rather neuralgic for the UK government both due to its 'global Britain' foreign policy and to the UK government's aim to stop the UK from fragmenting. There is a potentially unstable triangle here of Scotland-EU, EU-UK, and UK-Scotland relationships all impacting on Scotland's European relations. Yet, overall, it is in both Scotland's and the UK's interests to have positive relationships with the EU.

Whether and when Scotland may have another independence referendum is unclear. But if at a future point, the Scottish public votes for independence, then Scotland would be eligible to apply to join the EU. It seems clear that the Scottish government aims to demonstrate that it understands the EU's neutrality on Scotland's constitutional question, knows that it will face a normal accession process, and aims to show that now and in the future it will be a constructive European player.

Introduction[1]

In the 2016 EU referendum, Scotland voted to remain in the EU but the UK as a whole voted to leave. After three and a half years of frequently tumultuous UK politics, Brexit finally happened: Scotland, with the rest of the UK, left the European Union on 31st January 2020.

EU-UK relations are now mainly governed by the Trade and Cooperation Agreement[2] and by the 2019 Withdrawal Agreement[3]. The Brexit transition period concluded at the end of 2020 when the UK left the EU's single market and customs union, although under the Withdrawal Agreement, Northern Ireland effectively stayed in the EU's single market for goods and its customs union.

Yet the UK is still a European state – albeit outside the EU – and the EU remains the UK's, and Scotland's, largest trading partner. While the UK government is keen, post-Brexit, to promote its new 'global Britain' foreign policy, European relations will remain vital, if now more complex to navigate, both for the UK and for Scotland.

After the 6th May Scottish parliament elections, the Scottish government, led again by First Minister Nicola Sturgeon, is committed to holding another independence referendum, with the goal of achieving independence in the European Union. Boris Johnson, however, has indicated he is not open to another independence vote. Yet, while the constitutional stand-off between London and Edinburgh unfolds in the coming years, at the same time Scotland's relations with the EU will continue to develop in the context of the current constitutional and political status quo.

How Scotland's European relations take shape post-Brexit, and the nature of the Scottish government's strategic approach and para-diplomacy, will be determined not only by Scottish-EU interaction but also by the state of EU-UK relations and the state of Scottish government-UK government relations, a potentially unstable triangle. While the UK, and Scotland, face the challenge of adjusting to life outside the EU and the negative impacts of Brexit, the wider challenges of Covid-19 (both health and economic), climate change, and difficult global geopolitical dynamics present a very tough wider framework of national, European and international politics within which UK-EU and Scotland-EU relations will now develop.

This paper analyses the current scope and state of Scotland's European relations. It considers the outcome of the Scottish elections; the range of economic, political and social relationships between Scotland and the EU; the impact of Brexit and the Trade and Cooperation Agreement; and the Scottish government's strategy and approach to Scotland's European relations. The paper also considers the feasibility of the goal of independence in the EU and how this relates to its existing European strategy.

Section One: The May 2021 Scottish Parliament Elections

The May Scottish parliament elections received a lot of attention outside Scotland – both from UK, mostly London-based, media and from European

media. Media interest was particularly focused on whether another win for the Scottish National Party (SNP) would take Scotland closer to another independence referendum and the UK closer to potentially breaking up. Yet the continuing constitutional stand-off between Edinburgh and London, on the question of whether and when there might be another independence referendum, was never going to be simply resolved by these elections alone.

The results were a comfortable win for the two pro-independence parties – the SNP and Scottish Green party[4]. The SNP won 64 seats, one short of an overall majority in the 129 seat parliament and the Greens won 8 seats, giving a combined majority of pro-independence votes of 72 members of the Scottish parliament (MSPs). The SNP had one more seat than at the last elections in 2016 and the Greens two more. Talks began later in May, between the SNP and Greens, on a cooperation agreement which, if it happens, will be considerably lighter than a formal coalition but still significant[5].

The Conservatives came second in the elections with 31 seats while Labour languished, still, in third place with 22 seats, and the LibDems managed just 4. Former First Minister Alex Salmond established the new Alba party just before the election; it won no seats and got just 1.7% of the regional vote (Scottish parliament voting being split into constituency seats and a proportional representation regional vote).

Both the SNP and Greens in their manifestos had clearly set out their goal of holding another independence referendum – and their shared goal of independence in the EU. So the results represent a mandate for such a referendum. Nicola Sturgeon rapidly called it a "matter of fundamental democratic principle" that such a vote should now be held, once the Covid crisis was past[6].

Yet the Conservatives argued in response that the SNP had failed to get an overall majority (something the Scottish proportional representation system is designed more to avoid than allow) and that tackling the Covid crisis had to come first. Michael Gove, UK Cabinet Office minister, did though tell the BBC that the UK is a voluntary union and that Scotland had a right to leave while insisting – just as Theresa May had done in 2017 – that now was not the time[7]. But the UK government looks unlikely to agree another referendum any time soon or at all. And it is also possible Boris Johnson may look to hold an early UK general election in 2023 (instead of 2024) which could complicate any push from Nicola Sturgeon for a referendum before the end of 2023, half way through the new Scottish parliament's term.

How the Covid crisis evolves next, both in health terms and in its economic impacts (and alongside the negative economic impact of Brexit), will have a crucial influence on when and how the political dynamics and constitutional stand-off develop. Equally closely watched will be how Scottish public opinion evolves on independence.

In the second half of 2020, over 20 opinion polls gave a sustained lead in favour of independence. But from early 2021, influenced quite likely both by the pandemic (notably the successful vaccine roll out) and by the fall-out from the bitter Salmond-Sturgeon stand-off, public opinion on independence went back to a 50:50 split. While the SNP and Greens have a clear majority in the Scottish parliament post-election, voters split 50:50 between pro-independence and pro-union parties taking the constituency and regional list votes together[8].

Brexit still feeds into the political dynamics around independence[9]. Younger voters are strongly pro-European and pro-independence. Older voters especially those over 65 years old are clearly anti-independence and less strongly pro-European (though Scottish voters voted 'remain' across all age groups in 2016)[10]. Notably, since the 2016 Brexit vote, there has been a clear shift by some 'remain' voters who previously opposed independence into the pro-independence camp[11]. A recent analysis from the Scottish Election Study argues that, whereas there used to be four 'tribes' – looking at support for Brexit/independence together – made up of yes/leave, yes/remain, no/leave and no/remain, there are now effectively three main tribes with the yes/leave group becoming very small[12].

If the Covid crisis subsides by 2022, then pressure will increase for Nicola Sturgeon to push Downing street to agree to another vote. Sturgeon has already said she would, after the pandemic is over, introduce legislation for a referendum into the Scottish parliament – which would be expected to be challenged in court by the UK government (if it had not already agreed with the Scottish government to hold one)[13]. At the same time, the Scottish government is clear that it will only hold a referendum that is legal and constitutional, fully aware that this is vital for international recognition and for its ambitions of a rapid EU accession process in the case of a yes to independence.

Section Two: Scotland's European Relations
Scotland has a myriad of European relationships and networks – political, social, cultural, economic/business, educational and more. Most of these are inevitably impacted on, to at least some degree, by Brexit, including by the framework of the two treaties now governing EU-UK relations and by decisions of the UK government on post-Brexit policy – from migration to trade to business. In this section, we principally discuss non-governmental relations (looking at the Scottish government's EU relations and network of offices in a subsequent section below).

EU-Scotland Migration: There are around 234,000 EU citizens in Scotland. Post-Brexit, the Scottish government has strongly encouraged EU and European Economic Area (EEA) citizens living in Scotland to stay, and encouraged them to apply for the 'settled status' set out in the Withdrawal Agreement. With the deadline for such applications approaching – on 30th June 2021 – the Scottish government asked the UK Home Office at the end of May to extend that deadline[14]. UK citizens in the EU, thought to number

around 1.3 million, also have to apply for such status to stay in their EU country of residence – a significant number of these will be from Scotland.

These connections through migration between Scotland and the EU and EEA will stay as one important part of EU-Scotland relations. Yet, with the end of free movement of people, it is anticipated that inevitably fewer people will move between Scotland and the EU to live and work or study. Given Scotland's aging population, this will impact negatively on Scotland's demographics and across a number of different sectors. In the wake of Brexit, the Scottish government did ask the UK government to devolve aspects of migration policy to the Scottish parliament, given the importance of inward migration to the Scottish economy and society – but this request, including the creation of a 'Scottish visa' was rejected[15].

Education and Training Links: The UK government also chose not to continue participating in the EU's education and training Erasmus scheme post-Brexit – something which both the Scottish and Welsh governments were keen to do – even though it did reach agreement with the EU on continuing participation in the EU's Horizon research programme. So while Scottish universities' research networks in the EU may be protected to some extent, their ability to attract EU students and to send their students to EU universities is now significantly less. Even in research, it may be much less attractive and more difficult, in the absence of free movement, for EU researchers to move to Scotland and vice versa.

In late March, the Welsh government announced its own scheme aimed at replicating and keeping some of the benefits of Erasmus (though sub-states within third countries – the situation of Wales and Scotland – cannot participate in Erasmus if the third country/state chooses not to)[16]. It is possible that the Scottish government will set up a scheme similar to the Welsh one but this has yet to be decided.

Diverse EU-Scotland Civil Society Links: The impacts of Brexit are many, granular and diverse. So while educational and research links between Scotland and the EU will continue, they will be made more complex and are likely to be less intense. Similarly, across the broad range of cultural interaction – from the Edinburgh festivals to musicians from Scotland performing in the EU and vice versa to visas for theatre performers and more – the combination of greater bureaucracy and cost with tougher border and migration controls are already being strongly noted and criticised[17].

Many Scotland-European links will, even so, be retained not least in organised civil society – some of them, as before, mediated through UK-EU relations. So, for example, the UK's leading business organisation the Confederation of British Industry (CBI) is still part of the European network, Business Europe – and through CBI Scotland, there is an access point into the network there for (some) Scottish businesses. The Scottish Trades Union Congress (STUC) is a member of Scotland Europa (see below) and, while it is not a member of the European Trade Union Confederation (ETUC), it has links to it as it does to the UK TUC (which is a member of the ETUC).

Many non-governmental bodies (NGOs) as well as governmental ones have a dense set of networks with European and international counterparts. Scotland Europa is a membership organisation bringing together a range of businesses, universities, public bodies and others to promote Scottish interests in the EU (and it sits in Scotland House in Brussels alongside the Scottish government's office there). The Convention of Scottish Local Authorities (Cosla) is part of the Council of European Municipalities and Regions. One example for NGOs is in the development sector: the UK's main international development network for NGOs – BOND – is still a part of the EU development network Concorde, and the Scottish International Development Alliance cooperates closely with BOND, as well having its own multifarious European links.

Yet the fact that so many networks continue to exist does not mean nothing has changed with Brexit. Many of these networks are aiming to contribute to and influence EU policy formation. But with the UK no longer an EU member state, then UK and Scottish organisations are likely to have less influence both within their respective European network bodies and, in particular, when in direct contact with EU institutions – coming from a third country not a member state will make some doors harder to open and serious engagement more difficult to achieve. With the UK no longer a member state, many sources of funding and opportunities for joint projects are also no longer available. There is less influence, less voice, less access and many fewer funding opportunities or scope for project participation.

Many Scottish organisations looking for influence and information in Brussels would also previously have focused their efforts, in part, on UK and Scottish government, politicians and diplomats. But while both the UK mission to the EU and the Scottish government office in Brussels are still there, their staff, and UK ministers are no longer in the myriad of daily, weekly and monthly meetings at the Council of Ministers, European Council, European Commission and other bodies (including the Committee of the Regions). Scotland no longer has its six MEPs at the European parliament, nor the UK as a whole its 73 MEPs.

From the detailed specifics of a particular EU environmental law or development instrument to the broad debate at the Future of Europe conference, Scottish groups are now at a much greater distance than they were pre-Brexit; they are on the outside looking in.

There is now a UK Friendship Group, based at the European Parliament, and a European Friends of Scotland group but welcome though these are, they represent a light and distant point of contact that is simply not comparable to the depth, density and strength that went along with the UK being not only a member state but a large and highly influential one. The UK, as a large neighbouring state, will have opportunities to influence but these will be much less than from inside the EU. And the UK's current fractious relationship with the EU will not help its efforts at influence and lobbying from the outside. Scotland is seen in a much more positive light, as a constructive pro-

European country, but nonetheless it cannot escape the loss of influence, voice and access that is part and parcel of its – and the UK's – post-Brexit status[18].

Section Three: Scotland's Trade with the EU

Scotland has significant trading relations with the European Union. In 2018 (the most recent year that data is available), almost half of Scotland's international trade was with the EU, amounting to £16.1 billion out of a total of £33.8 billion in international exports[19]. Including close European trading partners (Norway, Switzerland and Turkey), Scotland's European trade is 53% of its total international trade. Scotland also benefits from over 4,000 European companies with operations in Scotland[20].

The goals of the Scottish government's trade policy is set out in its early 2021 policy paper "Trade: Our Vision", although this has to sit in the context of powers over international trade relations sitting with the UK government[21]. This strategy paper sets out the Scottish government's five principles that it wants to drive its activities on trade and investment: inclusive growth, wellbeing, sustainability, net zero and good governance.

Trade with the EU has grown faster than that with the rest of the world and the rest of the UK over the last decade[22]. However, that positive differential in growth rates is likely to be hit as the impact on Scotland-EU trade of leaving the EU's single market and customs union becomes clear.

Scotland trades more with the rest of the UK than it does internationally. Its EU and non-EU international exports in 2018 were two-thirds of its exports to the UK. And its European exports were 35% of those with the rest of the UK.

European partners in the EU's single market (including Norway in the EEA) are, by far, the most important export destinations for Scotland's international exports. The US is the largest individual export destination but eight out of Scotland's top ten export destinations are in the EU/EEA and its EU/EEA exports are over three times those to the US[23]. Scotland's top five EU destinations are: France, Netherlands, Germany, Belgium and Ireland.

There is an interesting contrast between the broad sector focus of Scotland's international exports, and its EU exports, compared to its exports to the rest of the UK[24]. Over half (55%) of Scotland's international exports are manufactured goods while just over a third (36%) are services. Similarly, for its EU exports, 61.5% are manufactured goods and 31.7% are services. But this is reversed for exports to the UK where only 22% is manufactured goods and 58% are services, and 11% are utilities.

Despite exporting three times as much to the rest of the UK as it does to the EU, Scotland's manufactured exports to the UK at £11.3 billion are only 14% higher than its manufactured exports to the EU at £9.9 billion. Adding exports to Norway, Switzerland and Turkey to exports to the EU gives a total of Scotland's European exports of £10.7 billion (so manufacturing exports to the rest of the UK are just 6% higher compared to European exports)[25].

Meanwhile, total international manufactured exports from Scotland at £18.7 billion are much higher than those to the rest of the UK.

Brexit and the EU-UK Trade and Cooperation Agreement impact, of course, on all trade with the EU and EEA, both goods and services. But in terms of the constitutional debate, when it touches on Scotland's larger trade with the rest of the UK than the EU, this closeness in terms of manufacturing exports suggests that an in-depth granular analysis is needed of how different customs and non-tariff barriers would impact on goods and services in the case of independence in the EU. With services being the dominant export by far from Scotland to the rest of the UK, and with services figuring so little in the Trade and Cooperation Agreement, the question of what barriers an independent Scotland in the EU would face to services trade with the rest of the UK and where bilateral arrangements could be made (also in the context of the Common Travel Area) is a key one[26].

A recent study has suggested that, even before the UK left the EU, there was significant damage to its services trade with the Union. The study found Brexit had reduced services trade by £110 billion compared to its expected trajectory from 2016-2019 – while Ireland's services trade had grown by £126 billion more than projected[27]. These impacts are likely to continue given that the Trade and Cooperation Agreement does very little for services trade, as discussed further in the next section.

3.1 Brexit and the Trade and Cooperation Agreement
The EU is the UK's biggest international trade partner just as it is Scotland's largest partner. In 2019, 43% of UK exports went to the EU and 52% of the UK's imports came from the EU[28]. It has always been clear that putting trade barriers between the UK and EU, leaving the EU's single market and customs union, would have a negative impact on trade in both goods and services and so on the wider economy. How big a negative impact depended on the sort of future trade deal the EU and UK agreed. Several studies have shown that any net benefits from new UK trade agreements with other non-EU countries will not compensate for the economic loss from the negative impact of Brexit trade barriers on EU-UK trade[29].

The Trade and Cooperation Agreement represents a rather hard Brexit leading to a range of new barriers in the way of EU-UK trade. The Scottish government's initial estimate of the potential negative impact on the Scottish economy of the trade deal was that it could reduce Scottish GDP by 6.1% by 2030 compared to remaining in the EU[30].

After the 2016 referendum, there was debate about what form Brexit should take – as this had not been made clear, during the referendum, by those who campaigned successfully for leaving the EU. Prime Minister Theresa May – who had taken over from David Cameron – by autumn 2016, rapidly laid down her so-called red lines on leaving the EU's regulatory orbit. This ruled out a 'soft' Brexit of staying at least in the EU's single market and possibly in its customs union too, something many had argued for not least the Scottish government[31]. However, as the challenge of ensuring no hard border on the

island of Ireland became clearer, May agreed a Withdrawal Agreement with the EU which would have left the UK, temporarily but quite likely indefinitely, in the EU's customs union.

In a year of tempestuous politics – 2019 – May could not get her agreement with the EU through the House of Commons, eventually resigning that summer, with Boris Johnson becoming Prime Minister. Johnson agreed a revised version of the Withdrawal Agreement which no longer kept England, Wales and Scotland in the EU's customs union but effectively kept Northern Ireland in the EU's single market for goods and its customs union and put a border between Britain and Northern Ireland. Since the start of 2021, the management of that Britain-Northern Ireland border, and the implementation of the agreed Northern Ireland protocol, has led to increasingly fractious talks between the UK and the EU over how to ease its impact and to some difficult political dynamics in Northern Ireland.

Although Scotland had voted 62% remain in 2016, there was little serious discussion between successive UK governments and the Scottish government, let alone compromise, on the type of Brexit and future EU-UK relationship that should be aimed for. Theresa May did set up a new sub-committee within existing structures for consultation and discussion with the devolved administrations – the Joint Ministerial Committee (European Negotiations). The communiqué which accompanied this new sub-committee made it clear the goal was to discuss each government's needs for the new EU-UK relationship and to give the devolved governments sufficient oversight of EU-UK talks: "to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations"[32]. This did not happen[33]. In the event, the UK's negotiating agenda was rather driven by ideology, by the political dynamics within the Conservative party (in the cabinet and the House of Commons), and by a focus on leave voters (not on looking for compromise across the UK)[34].

Relations between the UK government and the devolved administrations were further strained by the Internal Market Act which, in dealing with the need to re-create a UK internal market having left the EU's single market, compromised and weakened devolved powers[35]. How challenging this becomes will, in part, depend on how much the UK chooses to diverge in regulatory terms from the EU – which is far from cost-free[36]. Ironically, having argued that Brexit can be beneficial in terms of regulatory divergence from the EU, the Conservatives have at the same time argued that regulatory divergence in Scotland from the rest of the UK (potentially by aligning more closely with EU rules) would be harmful.

The EU-UK Trade and Cooperation Agreement was agreed at the end of December 2020, just days before it came into provisional effect on 1st January 2021. Businesses and other organisations across the UK, including in Scotland, have struggled since to adapt to the new rules, bureaucracy, regulations and customs checks that the deal has imposed in place of free movement of people, goods, services and capital. Even as familiarity with the

new rules grows, the costs remain considerable although also varying substantially by sector.

In the midst of the Covid crisis, the Brexit shock has compounded the economic difficulties from Covid. In mid-2020, the UK government had refused to extend the UK's Brexit transition period with the EU – despite the pandemic and the fact the trade deal talks were making slow progress – something pushed for by the Scottish government. Moreover, those sectors that were, to some extent, less affected by Covid, including several in manufacturing, were the sectors most affected by Brexit. Conversely, sectors such as hospitality – strongly affected by Covid – were less affected by Brexit (though ending of free movement of people has had a serious impact). As James Black of the Fraser of Allander Institute puts it: "some of the sectors most affected in the pandemic have some of the least activity supported by exports to the EU"[37].

It is relatively early to see the full impact of Brexit in the UK and Scotland's trade statistics – and to distinguish the impact of Brexit from Covid. However, initial data from the UK's Office of National Statistics (ONS) suggests that UK trade with the EU has been hit much harder in the first three months of 2021 than trade with the rest of the world (which would suggest the fall in EU trade is principally a Brexit effect rather than a Covid one). The ONS found that UK-EU trade had fallen by 23.1% in the first three months of 2021 compared to 2018, while trade with non-EU countries had fallen only 0.8% over the same period[38]. Some of the particularly sharp falls in UK-EU trade in January and February appear to, at least in part, reflect companies unwinding stockpiling of goods that they had done to counter the risk of a 'no-deal' Brexit and the end of being in the EU's single market and customs union[39].

Brexit's impact is pervasive, given it involves unscrambling an economic and wider relationship built over 47 years. In Scotland, some sectors were notably hard hit as the new Trade and Cooperation Agreement came into effect. The fishing sector has struggled with the nature and range of the new rules, as has many parts of the food and drink sector. In January 2021, fish and shellfish exports to the EU, amongst the worst hit, were down 83%. While these figures may rebound to some extent as suppliers adjust to new rules, including veterinary and health rules, certification and more, it is clear this and other sectors have been very hard hit[40]. Food exports were down 63% and goods overall were down 41%. Smaller companies were also particularly affected, lacking resources to deal with the complex new bureaucracy and barriers of Brexit[41].

The impact of Brexit will continue to unfold in the months and years ahead. For now, the UK government shows no willingness to take steps that could, at least, ease some of the negative impacts – for instance by aligning with EU veterinary rules. However, overall, putting a range of non-tariff and customs barriers between UK and EU trade was always going to have a negative effect. Nor will new trade deals compensate for the economic loss from putting more barriers between EU and UK trade. And new trade deals, such as that currently being negotiated between the UK and Australia, may cause

harm to particular sectors, with major concerns over the impacts in this case on Scottish agriculture, and will bring little overall economic benefit[42].

There are also a vital and detailed set of governance relationships as part of the Trade and Cooperation Agreement, much of which have yet to be fully implemented, but which will be vital as the new EU-UK relationship unfolds. There is an overarching Partnership Council, which met for the first time on 9th June 2021, and more detailed specialised committees and working groups under that, as well as a parliamentary partnership assembly which will bring together representatives of the European Parliament and the UK parliament.

The Scottish government, and the Scottish parliament's External Affairs committee, have both emphasised the importance of appropriate Scottish representation within these governance bodies, not least as they will touch on devolved competences. But how, whether and to what extent that representation and inclusion will be forthcoming remains, for now, unclear[43]. There are some current discussions on this, including on how and when Scottish government representatives may participate but it is expected that decision-making will rest with the UK alone.

Tracking the continuing impacts of Brexit for Scotland must be prioritised as a key and wide-ranging task for the Scottish government. This will help both to inform immediate policy and contribute in terms of overarching goals for Scotland-EU relations in the context of Brexit.

Section Four: The Scottish Government's European Policies and Strategy

The Scottish government's European policies and goals stand, in many ways, in direct opposition to those of the UK government. The Scottish government was and remains opposed to Brexit; it aims to reverse Brexit for Scotland through its goal of independence in the EU. It wants to stay aligned to EU laws in devolved areas of competence as far as possible. And it recognises the importance and power of the EU as a body – something that the UK government's 'global Britain' strategy effectively aims to downplay[44].

Scotland – and not only its government – is much more comfortable in its image and fact of being a European country than can be said to be the case for England. It looks to its European neighbours, Ireland to the West, the Nordics and Baltics to the East, to learn, to network and to compare; 'global Britain' does not much, if at all, resonate in Scotland[45].

Even so, there are some areas of similarity or potential overlap in goals: building strong bilateral relations with EU member states, having an effective presence in Brussels, engaging with the EU on climate change. Yet these only have to be listed to also see the differences.

The unfolding EU-UK relationship post-Brexit is so far notably fractious, especially but not only on the Northern Ireland protocol. On Northern Ireland, the former UK negotiator now Brexit minister, David Frost, insists that the protocol that Boris Johnson signed up to – and specifically wanted to end

Theresa May's commitment to staying in the EU's customs union – is unsustainable and not fit for purpose[46]. The June G7 summit became, in part, an EU-UK stand-off on the issue with President Macron visibly frustrated at the UK refusal to implement an agreement they signed. As long as the EU-relationship is fractious or confrontational then the UK's influence and its diplomacy in Brussels will be much less effective (already severely downgraded in impact by Brexit).

The COP26 climate summit, due to be held in Glasgow in the autumn, should be a chance for the UK and Scottish governments to cooperate with each other and to raise both their profiles in a positive way internationally. Yet even here, the UK government's 'global Britain' strategy dictates that more emphasis will be put on bilateral relations with France and Germany, on the G7, on transatlantic relations than on recognising the relative power and influence of the EU. And fractious and tense London-Edinburgh relations will create some frictions despite the shared vital interest in a successful COP26.

The Scottish government, with its anti-Brexit and pro-EU image, can to some extent side-step the stand-offs in the EU-UK relationship but only partially – it is not a state and foreign policy is reserved to the UK. Scottish politicians or officials may be more welcome in EU capitals but they are nonetheless constrained to promote EU-Scotland relations within the wider context of the Trade and Cooperation Agreement and the Withdrawal Agreement. The lack of influence by the devolved administrations on UK policy towards the EU, in the context of the new agreements, is well noted in Brussels (as it was during the Brexit talks). There may be sympathy to Scotland having voted 'remain' but if the hard-nosed reality is that Scottish government views (or views of SNP MPs at Westminster) have no influence at all over the UK government then the concrete areas where Scotland's policy positions, goals and interests are of interest and relevance to the EU are inevitably limited.

4.1 EU Strategy and Para-Diplomacy

The Scottish government has a range of European policies which broadly sit within an overarching strategy. Foreign and defence policy are reserved powers that sit at UK level. But Scotland's range of devolved powers, including in health, environment, economy, education and culture, all offer substantial scope to engage in external affairs both at European and international level. Nor is this type of public diplomacy or para-diplomacy at all unusual for sub-national, regional or city level governments[47].

There is a protocol, or memorandum, on relations between the UK government and the devolved administrations drawn up in 2013, which covers external affairs[48] (while efforts to review and update the overall structure of these relations has now dragged on for some time[49]). The UK government is expected, through this memorandum, to communicate, involve in policy discussions and engage with the devolved administrations in devolved areas and too where non-devolved issues impact onto devolved areas – including on EU issues. The 2013 memorandum also sets out that the devolved administrations can – as they do – have offices in Brussels, which are seen as formally part of the UK permanent representation to the EU (now UK mission

to the EU). Whether the framework for relations between the UK and devolved governments will be updated as a result of the continuing intergovernmental relations review is an open question. It is a very sensitive area to alter and finding consensus may prove difficult or impossible (though post-Brexit it surely needs updating).

Scotland's International Network
Scotland has a substantial network of offices that provide a basis for a range of soft or para-diplomacy activities, especially trade and investment but also wider cultural and relationship-building activities.

A Scottish government office was established in Brussels in 1999, sharing its office space, within Scotland House on the Rond-point Schumann, with Scotland Europa (already in Brussels from 1992) and Scottish Development International. More recently, the Scottish government set up what it calls innovation and investment hubs in Berlin, Dublin, London and Paris. There are also three more Scottish government offices in Beijing, Ottawa and Washington DC. The Scottish government describes the role of these eight offices as "to promote Scottish interests overseas and strengthen our relationships with countries and continents"[50]. There is a wider set of over 30 international trade and investment promotion offices overseen by Scottish Development International, Scotland's trade and inward investment body.

In its manifesto for the May 2021 elections, the SNP said that it intended to set up further Nordic and Baltic hubs. There are both resource and political challenges here: whether a new hub (or hubs) will be prioritised over, for example, deepening the Berlin and Paris offices (currently with only around 3 or 4 staff in each) is an open question.

The political and constitutional tensions and disagreement between the UK and Scottish governments are also simmering here. There are some concerns that, while Scotland's European and international offices are not unusual, the UK government may want to rein them in, monitor them more closely or impede their expansion (located as the 8 key offices generally are in UK embassies).

At the end of May 2021, one Conservative MSP, Stephen Kerr, wrote to the UK Foreign Secretary, questioning the expenditure by the Scottish government on its international offices and expressing the view that its network should not be expanded further. Also in late May, Brexit Minister David Frost wrote to the devolved administrations reminding them of the need to keep the UK government informed about contact with the EU and member states and "to support the UK government's position in such contacts"[51]. Since foreign policy is reserved to the UK then this could be seen as a re-emphasising of the status quo. But equally it could be seen too, and doubtless was, as pressurising and political.

There is a clear set of tensions here that are likely to continue to play out. The Scottish government's European and international para-diplomacy is not unusual and aims to promote Scottish interests. But given the constitutional

tensions over independence, the UK government is neuralgic and somewhat hostile to the Scottish government building separate – and certainly in the EU case – warmer international relations[52].

Yet the Scottish government is, in many ways, on fairly solid ground here. Promoting trade, culture, research, investment and innovation including on sustainable energy and swapping climate change best practice (for instance looking at Scottish-German collaboration on hydrogen) is a fairly typical-looking para-diplomacy strategy and within its powers as a devolved government. Showcasing Scotland and building networks will certainly also help the Scottish government and SNP indirectly make the case that Scotland could be a viable and constructive independent state – but this is an indirect (even if intended) outcome of a fairly standard sub-state approach to external affairs. The UK government can see this dual impact of a typical sub-state external relations strategy. And it may challenge this more and be on the watch for Scotland's international offices straying beyond their remit.

While the Scottish government has no responsibility for foreign policy and cannot promote a separate one to that of the UK, Brexit also throws up interesting challenges here. The UK government already strongly damaged its reputation and trust with the EU at the end of 2020 when it started to legislate – through the then Internal Market Bill (now Act) – to renege on parts of the Northern Ireland protocol that it had only just signed the year before (these threats were withdrawn once the trade deal was agreed). The UK government then unilaterally extended grace periods for some Britain to Northern Ireland border checks in early 2021. Tensions, and talks, continue to grow with the EU over how to make the protocol, and border, function more smoothly.

The Scottish government has no particular role here but it would surely not support breaking international law – the Withdrawal Agreement – if that is now part of the UK's foreign policy. In general, the more fractious the UK's relationship with the EU, the more normal, Scotland's more positive para-diplomacy may appear. But it is also in Scotland's interests to operate within a more constructive and stable EU-UK relationship than we see at present.

4.2 Is there a European Strategy?
The Scottish government has a broad international framework – dating back to 2017 in its current form – focusing on international engagement and exchange, and on businesses and economic competitiveness[53]. On the symbolic day when the UK left the EU – 31st January 2020 – the Scottish government published a slim, strategy document setting out both how it saw the EU's future and Scotland's contribution to that[54]. With an emphasis on Scotland and the EU's shared values, including democracy and human rights, it emphasised that: "Whatever its constitutional future, Scotland will, like Europe, remain an outward facing constructive partner on the world stage".

This European strategy document set out three main priorities: (1) the environment, tackling climate change and biodiversity; (2) promoting growth and well-being; and (3) promoting innovation, research and new technologies. Broadly, these are the three main areas that continue to underpin Scottish

para-diplomacy in the EU, alongside more traditional cultural diplomacy. And they connect well, deliberately, with EU concerns.

The UK, of course, is now a third country and no longer a member state post-Brexit. And Scotland, too, faces harder access and less influence as a result. Nonetheless, a para-diplomacy that focuses on issues of genuine shared concern and that has substantive content of interest to all parties in a conversation can still be effective. Whether it will become much harder to open doors for such conversations now the UK has left the EU and its single market and customs union, time will tell. But the UK and Scotland are now outsiders, no longer in the room. And, certainly, both Scottish and UK governments will have to work much harder to ascertain the direction of travel in different EU policy areas and face up to the fact there will be vastly less influence over those policies.

The Scottish government also intends to stay aligned as far as possible to EU legislation in devolved areas notably the environment, food standards and human rights. The Scottish parliament passed a bill to this effect at the end of 2020 – the UK Withdrawal from the EU (Continuity) Bill[55]. The Scottish Conservatives oppose this Bill arguing it could lead to regulatory divergence with the rest of the UK. How far the Scottish government will be able to pursue this alignment agenda will also depend on the implementation of the UK government's Internal Market Act which in many ways centralises powers and weakens devolved powers and has certainly added to constitutional tensions across the UK[56].

The European Friends of Scotland group, established since Brexit, is another network that gives informal and constructive lines of communication with members of the European Parliament[57]. It aims to promote stronger economic, cultural, social and civil society relations between the EU and Scotland and to maintain links between Scottish parliamentarians and MEPs. There are currently 38 MEPs in the group and it is explicitly neutral on the constitutional question. The Scottish government's Brussels office provides the secretariat for the group.

More generally, Scottish government ministers, MSPs and MPs all have, to varying degrees, European and international contacts. The Scottish government's European priorities, reflected in its strategy paper and the work of its EU hubs, are underpinned by bilateral and multilateral contacts including visits and media work (even while, during the pandemic, these are mostly virtual – something that can though facilitate potentially more and wider contacts).

The Scottish government has put particular emphasis on its European neighbourhood including relations with Ireland, with the Nordic and Baltic countries, and promoting its Arctic connections and relationships[58]. In early 2021, the Scottish and Irish governments published a joint bilateral review of Ireland-Scotland relations – focused on relatively uncontroversial areas (from a UK constitutional point of view) such as culture and research[59]. It is notable that the Irish government, still pursuing its deft post-Brexit diplomacy,

manages to work rather adroitly, on East-West issues, with UK and Welsh and Scottish governments, while side-stepping constitutional tensions – and indeed Ireland opened a consulate-general in Cardiff in 2019, matching its already existing one in Edinburgh (with one due in Manchester in July this year).

Does this range of Scottish activity and relationship-building add up to a clear Scottish government European strategy? Overall, there is more clarity of strategic aims and means of delivering on those aims than two or three years back[60]. The shifting and difficult nature of EU-UK relations, and Brexit itself (both being outside of EU meetings and decision-making and the major economic and wider social impact), together with the priority of managing the Covid-19 crisis, makes strategic consistency and depth on Europe challenging indeed. But there is now a clearer if light strategic framework for the Scottish government's policies towards the EU which adds up to a plausible approach at the start of the post-Brexit period.

As outlined above, even such a light framework is likely to prove periodically controversial within the UK given constitutional tensions and policy differences. And, post-Brexit, influence and access will be challenging – although there is much to be learned both from how smaller member states and their regions network and have influence within the EU and how third countries and regions also operate in the EU context[61].

The other big question here is how this sub-state para-diplomacy strategy sits within the Scottish government's wider goal of independence in the EU – a goal opposed by the UK government (and on which Scottish public opinion is currently split). If there is a wider European strategy that encompasses both strategy as a devolved government and strategy to achieve independence in the EU, it is not currently, perhaps unsurprisingly, an entirely explicit one. Yet independence in the EU, as we discuss next, is the overarching goal of the Scottish government.

Section Five: Independence in the EU

Amidst the many unknowns on independence – when, whether and on what basis there will be another independence referendum and whether the Scottish public will say 'yes' to independence or choose to stay part of the UK as it did in 2014 – it is clear for now that the Scottish government and SNP will stick to its goal of rejoining the EU as a core part of its independence pitch. There are some both in the SNP and in the wider independence movement who would prefer an independent Scotland joined the EEA – or not even that – but that is a minority view.

Brussels and EU member states are watching the UK's constitutional tensions fairly closely but with careful neutrality. This is well appreciated by the Scottish government and SNP who appear to be aiming to re-assure EU contacts that they understand the EU's neutrality and are not asking the EU to take sides on Scotland's constitutional choice. The Scottish government also frequently emphasises that its goal is a legally and constitutionally sound referendum.

At the same time, on the basis of Scottish government policy, presenting Scotland as a potential member-state-in-waiting is perhaps an underlying message. And, while it talks less about the process of EU accession, there is no suggestion from the Scottish government that an independent Scotland would expect special treatment. Rather, the aim appears to be – as in its devolved para-diplomacy strategy – to present Scotland as a constructive, non-problematic player that is well aligned and engaged with EU policies and the EU's future development.

There is, of course, plenty of scope for conversations on the implications of an independent Scotland in the EU – whether through contacts with EU member states in London, Brussels or national capitals. The SNP's shadow foreign affairs and defence spokespeople – Alyn Smith MP and Stuart MacDonald MP – say they are presenting their interactions with EU networks as project 'no surprises', explaining but not evangelising on Scotland's potential route to independence in the EU[62]. At the same time, Scotland's political future is not a priority issue on the EU agenda – and in terms of EU-UK relations, the current clear priority is the Northern Ireland protocol.

The EU's accession processes are well known and clearly laid out. If Scotland became legally and constitutionally independent then, as a European state, it could apply to join the EU[63]. This is both a technical and a political process. Accession candidates have to show they are democracies, functioning market economies and have the capability to take on the full EU acquis (the Copenhagen Criteria) and then, through detailed, chapter-by-chapter negotiations show they have legislated for, and implemented, EU laws and regulations. From becoming a candidate country to opening talks to finally concluding an accession treaty, the EU27 take decisions at unanimity. So politics as well as technical issues can and does intrude.

In many ways, in an independence scenario, Scotland would look relatively well positioned for an EU accession process . Compared, for instance, to the new democracies in central and eastern Europe in the 1990s, or to the Western Balkans accession process today, Scotland was inside the EU for 47 years as part of the UK[64].

However, timing will be one issue here. If there is an independence referendum in the next half decade, it is quite possible that Scotland will not have diverged very far from EU rules (though that will depend mostly on decisions taken at UK level). If an independence referendum was held after ten or more years, then divergence would be greater and time needed to re-align would be longer.

Scotland would also, in this scenario, be establishing all the necessary institutions needed to become a state – from a central bank and currency, to a foreign office and a foreign and security policy, to establishing control of its borders. Brexit also means the prospect for independence in the EU looks very different to how it looked in 2014 (as was already apparent in the run up to the 2016 vote[65]). Independence in the EU today would imply a relatively hard border between England and Scotland – assuming the Trade and

Cooperation Agreement still determined EU-UK relations at the time of an independent Scotland's accession to the EU. Even so, if an independent Scotland was in the UK/Ireland common travel area, it would still have free movement of people across the UK (this would need to get EU agreement for a Schengen opt-out as Ireland has)[66].

The challenge of such a border is not, though, in establishing border controls as such. Rather it is in the economic costs of putting a regulatory and customs border between Scotland and the rest of the UK (or more precisely between Scotland and England and Wales – given the Northern Ireland protocol). This points to the heart of the economic issues around independence: what will be the relative economic costs and benefits of independence in the EU?

Scotland's First Minister, Nicola Sturgeon, has said that the economic case for independence has to be renewed, not least in the face of the Covid crisis. She had also suggested in early 2020 that there would be some strategy and policy papers on specific issues but these were postponed in the face of the pandemic. Both the SNP's economic arguments and its understanding of the EU accession process – which have been well analysed in wider academic and think tank research – need to see the light of day. During the election, Sturgeon suggested that full analysis of independence would be given ahead of an independence referendum, but this surely needs to be done soon – rather than just as a part of an actual referendum campaign – given the centrality of the constitutional question to Scottish political debate.

As well as the border question, there have been many questions raised about what level of fiscal deficit an independent Scotland may have and how that could delay EU accession – certainly an independent Scotland would have to meet EU fiscal rules (or at least be close by the time of accession)[67]. The question of currency has also proved controversial with the current SNP policy of 'sterlingisation' raising questions of whether an accession candidate using the currency of a third country could join the EU. On this, Scotland would surely need both to have its own currency and to commit to joining the Euro – but there might be some potential leeway or short transition period on setting up its own currency (this would be a political decision)[68].

There are several major transition issues that need more consideration: transition from the UK, transition to being a fully-fledged independent state, and transition into the EU. EU-UK relations are now structured through the Trade and Cooperation Agreement (TCA) and there would be questions as to the implications for that Agreement, and of adjustments needed (for instance on fishing waters), if and when Scotland became independent. Might, for instance, Scotland stay temporarily in the TCA (with UK and EU agreement) – just as with the Brexit transition from the EU – and how quickly could and would the EU and Scotland agree an Association Agreement to manage their relations while and before accession talks took place (and what would that imply for the Scotland-England border).

From an EU point of view, these are all, for now, hypothetical questions. Yet for Scotland, with the constitutional debate remaining at the heart of its

politics, the Scottish government, elected on a manifesto of holding another independence referendum and having an overarching goal of independence in the EU, must surely provide its own clear EU accession analysis to facilitate an in-depth democratic debate.

Conclusion

Scotland's European relations are, in many ways, strong, diverse and positive. But Brexit, opposed by a majority of Scottish voters, has inevitably had powerful and negative impacts on many of those relationships. Yet, with the EU-UK Trade and Cooperation Agreement coming into force at the start of 2021, the full and cumulative impact of Brexit is only starting to be seen. It is an impact that is being felt across economic, social, cultural, political and security dimensions.

Scotland is still a European country. The EU remains its main international trading partner. Many EU citizens have made Scotland their home. Governmental and non-governmental organisations continue to engage with partners and networks across Europe. But much of that interaction has now become more difficult, more costly and more complex. The UK is no longer an EU member state and is no longer in the room for myriad EU discussions and decision-making on issues large and small. There is a major loss of influence, voice and access for Scotland as for the rest of the UK.

The Scottish government's European strategy aims to maintain and develop Scotland's European relations in this new, more difficult environment. Focusing on issues of common interest including the climate emergency, well-being, innovation and human rights, there are still many areas where constructive relationships can continue. But Scotland is now on the outside looking in.

Moreover, the sort of para-diplomacy engaged in by the Scottish government, normal though it is for sub-states and regions, perhaps inevitably becomes intertwined with the constitutional debate. The UK government looks more neuralgic than it needs to be on Scotland's European policy approach.

Whether, in the near or mid-term, Scotland will face another independence referendum remains an open question. If there is a 'yes' to independence in another vote then the question of EU accession will be one major issue. An independent Scotland would be eligible to apply to join the EU subject to meeting all the accession criteria. Post-Brexit this raises many more challenging issues than it might have done when the UK was still one of the EU's largest and most influential member states.

For now, Scotland's European relations are rather positive despite the impact of Brexit. Yet they are also strongly affected by the state of EU-UK relations which currently are difficult and fractious – and UK-Scotland constitutional tensions add a further tricky dynamic. Brexit is not the end of Scotland or the UK's European relations; it is rather the start of a new, complex and more challenging phase.

End Notes

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