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## Scotland's Independence and EU Membership

*Leading experts debate the implications of Scotland's referendum on its future in the European Union*

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Later this year, Scotland will be asked to vote in a referendum on whether the country should become independent. In an interview on the BBC's Andrew Marr Show, Jose Manuel Barroso, President of the European Commission, said it would be "extremely difficult, if not impossible" for an independent Scotland to join the European Union.

On 19th March, marking six months until the results of the referendum will be known, a panel of legal experts met at City University London to debate this issue. Panos Koutrakos, Professor of European Law at City, chaired the panel.

Professor Panos Koutrakos says the referendum on EU membership raises important questions for the European Union: "The impact of the referendum will not be confined to the UK constitutional order. The referendum may require that Scotland redefine its relationship with the European Union. This is uncharted waters for both lawyers and decision-makers. The City Law School took the initiative to organise this event in order to contribute to our understanding of the available legal and policy options."

Professor Sir David Edward, Professor Emeritus at the School of Law, University of Edinburgh, was a Judge at the European Court of Justice between 1992 and 2004. He has challenged the opinion of Jose Manuel Barroso over the status of an independent Scotland in the EU, asserting that there would be no need for a new accession treaty: "Given the application of EU law for over 40 years to Scottish citizens and companies (and to other EU Member States in their dealings with Scotland), a newly independent Scotland could not be equated to countries which were never part of the EU. Following a Yes vote in the referendum and prior to independence, the United Kingdom Government and the other Member States would be obliged to negotiate the future relations between Scotland and the EU. This would be so even if the other Member States refused to accept Scotland as a

Member State, since questions such as the customs union, the internal market, student fees and fisheries could not be left in doubt until the moment of independence".

Professor Kenneth Armstrong, University of Cambridge, argued that the solution preferred by the Scottish Government, namely a Treaty amendment under Article 48 of the Treaty on the European Union, would create significant legal and political obstacles. The proposed procedures will also make Scotland reliant on the United Kingdom - as the existing member state - to conduct any treaty revision negotiations with the European Union on its behalf. Critics of the alternative route, known as the Article 49 TEU accession process, argue that, were it to make its application for membership only after independence, Scotland might then have to join a queue of applicant member states, effectively creating a gap in its membership of the European Union. Professor Armstrong pointed out that, whatever route to membership is chosen, negotiations could begin after the referendum vote, but that the risk of a legal gap between independence and EU membership cannot be ruled out.

Professor Sir Alan Dashwood QC was Professor of European Law at the University of Cambridge from 1995 to 2009 and is now Professor Emeritus. "Following a vote for independence, the options for Scotland would be to seek a Treaty amendment or to apply for membership of the Union in the ordinary way. Regarding either option, technical solutions could be devised but this would be dependent on the goodwill of Member States that view the case of Scotland with alarm, because it may encourage their own separatists. I think it unlikely that a Treaty change, which could be seen as facilitating secession, would secure the approval of all 28 Member State Governments, let alone their Parliaments. As for the option of applying for membership, it would be easy for the Member States with secessionist concerns to find excuses for obstructing the procedure. Moreover, the people of Scotland needed to be told honestly that there was no realistic possibility of their negotiating an opt-out from the Euro".

The Scottish Independence Referendum Bill was introduced to the Scottish Parliament on March 21st 2013. The referendum will be held on September 18th 2014.