

Study explores how Scotland and Northern Ireland can fulfil aspirations post-Brexit

November 13 2017

Significant changes to both the current UK and European Union (EU) constitutional frameworks are "almost unavoidable" in order to accommodate the very different aspirations of Scotland and Northern Ireland post-Brexit.

In the referendum of June 2016, people in England and Wales voted to leave the EU, while those in Scotland and Northern Ireland voted to remain. There has since been debate about how to achieve the continuing presence in the single market of the UK constituent nations when their political leaders have declared that they do not wish to be taken out of the EU against their will.

In a new study, Dr Nikos Skoutaris of the University of East Anglia (UEA) explores two options for Scotland and Northern Ireland to remain in the EU and/or the single market. Writing in the *Cambridge Yearbook of European Legal Studies*, he argues that the EU has the necessary legal mechanisms to accommodate their differing aspirations.

The first option involves the achievement of Scottish independence and the reunification of Ireland through democratic referendums. However, Dr Skoutaris says that while Northern Ireland enjoys such a constitutional right, Scotland would have to reach an arrangement similar to the one that led to the organisation of the 2014 independence referendum.

The second option would see Scotland and Northern Ireland remaining in

the EU and/or the single market even without leaving the UK. Dr Skoutaris, a lecturer in EU law, reviews previous examples of territorial differentiation including Greenland, the Faroe Islands and Cyprus, showing there are a number of legally defensible solutions that would enable this to happen.

Dr Skoutaris said: "Especially with regard to Northern Ireland, such imaginative solutions can better protect the fragile peace process and the social and economic integration of the island of Ireland."

If England and Wales withdraw from the single market and the customs union while Scotland and Northern Ireland remain, it would entail the existence of a customs border and border checks within the territory of the UK.

In addition, a major constitutional amendment to the devolution arrangement would have to take place in order for both regions to take part effectively in the political and constitutional life of the EU and the European Economic Area.

While acknowledging the significant changes that such an arrangement would make to the constitutional status quo of the UK, Dr Skoutaris suggests that for the Government, the biggest incentive to offer this option to Scotland and Northern Ireland is that it represents a tangible alternative to leaving the UK.

"The UK might become almost a confederation but it would still be one recognised State under international law," said Dr Skoutaris. "In other words, it could save the Union. The devolved administrations could also avoid the tensions and divisions that would be caused if they were to leave the UK. In particular, such a solution presents fewer threats to the fragile Belfast Agreement than Brexit itself or a referendum for the reunification of Ireland.

"Even if neither the UK nor the devolved administrations opt for such an arrangement, it could still prove useful. It could be used transitionally until there is a renegotiation and a resettlement of the constitutional status of those two nations, ensuring that they do not find themselves outside the single market even for a minute.

"In any case, both the current UK and EU constitutional frameworks somehow seem to be unable to accommodate the very different aspirations of the UK constituent nations. In this sense, their significant amendment is almost unavoidable."

More information: 'Territorial differentiation in EU law: can Scotland and Northern Ireland remain in the EU and/or the single market?', Nikos Skoutaris, is published in the *Cambridge Yearbook of European Legal Studies*.

Provided by University of East Anglia

Citation: Study explores how Scotland and Northern Ireland can fulfil aspirations post-Brexit (2017, November 13) retrieved 23 April 2024 from <https://phys.org/news/2017-11-explores-scotland-northern-ireland-fulfil.html>

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