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EU membership after a Yes vote

WHENEVER the First Minister has made his case that an independent Scotland could remain within the EU without having to reapply for membership, there is one key witness he often cites: Sir David Edward.

Sir David is a former British judge of the European Court of Justice and, in the words of Alex Salmond, one of the true architects of the European Union. In a recent speech in Bruges, Mr Salmond quoted Sir David's opinion that the idea of a newly independent Scotland being required to leave the EU was absurd.

Quoting Sir David in this way is something the First Minister is fond of doing, so much so that Sir David has even heard himself described as a poster child of the Yes campaign.

However, writing in *The Herald* Agenda slot today, the professor emeritus at Edinburgh University has sought to clarify his position and there is both good news and bad news for the First Minister and nationalists.

The good news is Sir David says that the First Minister is entitled to quote his opinion on EU membership and that he stands by it. He says Scotland's status would depend on talks between London and Edinburgh and amending the Treaty on European Union and that he cannot accept an independent Scotland would automatically be excluded from the EU.

This is a perfectly reasonable view. The Scottish Government's position has always been that Scotland would negotiate its membership of the EU from within using Article 48 of the treaty, although legal opinion is divided on that. Earlier this year, a number of lawyers gave their views at Holyrood and some agreed with the UK Government that Scotland would

have to apply for membership as any new member would through Article 49; others, including Sir David, thought the Scottish Government's position was fair.

In the end, though, it would not be the lawyers but the politicians who made the decision and how straightforward this would be, and how long it would take, is unclear. Jean-Claude Juncker, the incoming president of the European Commission, this week appeared to support his predecessor Jose Manuel Barroso's declaration that Scotland would find it difficult to negotiate entry to the EU.

In his article today, Sir David also says he believes it would not be possible to sort the issue of membership within the Scottish Government's time limit of 18 months, which seems likely considering how much is at stake: Scotland's share of the UK budget rebate, membership (or not) of the Euro; the Schengen agreement; and so on.

And Sir David has another piece of disappointing news for Yes supporters: the former European judge is voting No. This is partly because he is concerned that Scottish universities would not retain their present access to UK funds. He is not the only senior figure in higher education who takes that view.

But Sir David is also worried about suggestions that it is only through independence that Scots can maintain their sense of identity. "I distrust appeals to identity," he says, "even if they are meant well."

That is one opinion of Sir David's the First Minister will not be quoting soon but Mr Salmond can at least draw comfort from the lawyer's views on the EU even if, ultimately, the decision on how and when Scotland joins will be political rather than legal.