

17-17 How to Make Immigration the Bridge to an Orderly and Timely Brexit

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UK Prime Minister Theresa May has formally initiated a two-year negotiation period for the United Kingdom to leave the European Union under the EU Treaty's Article 50.¹ To strengthen her negotiating hand with the 27 remaining members of the European Union, she also called an early parliamentary election (on June 8), a reversal of her previous position. Her goals in the negotiations are ambitious and contradictory. She seeks a future deep and special partnership for Britain—including maximum access to European markets—even while withdrawing from the EU-27's regulatory framework and open immigration rules.²

Lead negotiators in Brussels take the view that she cannot have it both ways. Indeed the EU-27 are calling for a phased approach³ to negotiations in which sufficient

progress on arrangements for an orderly withdrawal is made before the EU-27's future economic and political relationship with the United Kingdom can be discussed.

The legal design of Article 50 gives the EU-27 an upper hand by enabling them to impose their priorities during the two-year negotiating process. Britain, as the smaller and more trade-dependent economy, has more to lose if no deal is reached by the spring of 2019 and the United Kingdom is automatically cast out of the European Union in the event of a negotiation failure.

Faced with these dynamics, Prime Minister May must start the negotiations by tackling the two main issues the EU-27 want to settle first. First is an agreement on reciprocal guarantees to settle the status and rights of EU citizens and families in the United Kingdom and UK citizens and families in the European Union. Second is whether to retain, in whole or in part, the United Kingdom's prior commitment to funding a portion of the EU budget through 2020 and other lasting financial commitments made during the United Kingdom's time as an EU member. The difficulties of concluding a Brexit accord within two years will surely encourage May to strike a limited transitional agreement on the relationship until a new permanent trade and economic agreement comes into force. Pressed for time, the United Kingdom needs to find a way to get the negotiations off to a constructive start, without forcing an agreement on fiscal transfers or financial access.

One way the prime minister could generate goodwill would be to unilaterally announce that her government will grant all EU citizens living in the United Kingdom on March 29, 2019, full UK citizenship, except voting rights.⁴ Such a status would be a UK equivalent of a US green card. Under such a step, EU-27 citizens would acquire all the essential auxiliary rights already possessed by UK citizens, including work and residency permissions, contributory public pension benefits, family-based migration, title holdings for landownership, and social services. "UK green card equivalent holders" would not be able to vote but would be

1. See full Article 50 at www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-European-union-and-comments/title-6-final-provisions/137-article-50.html.

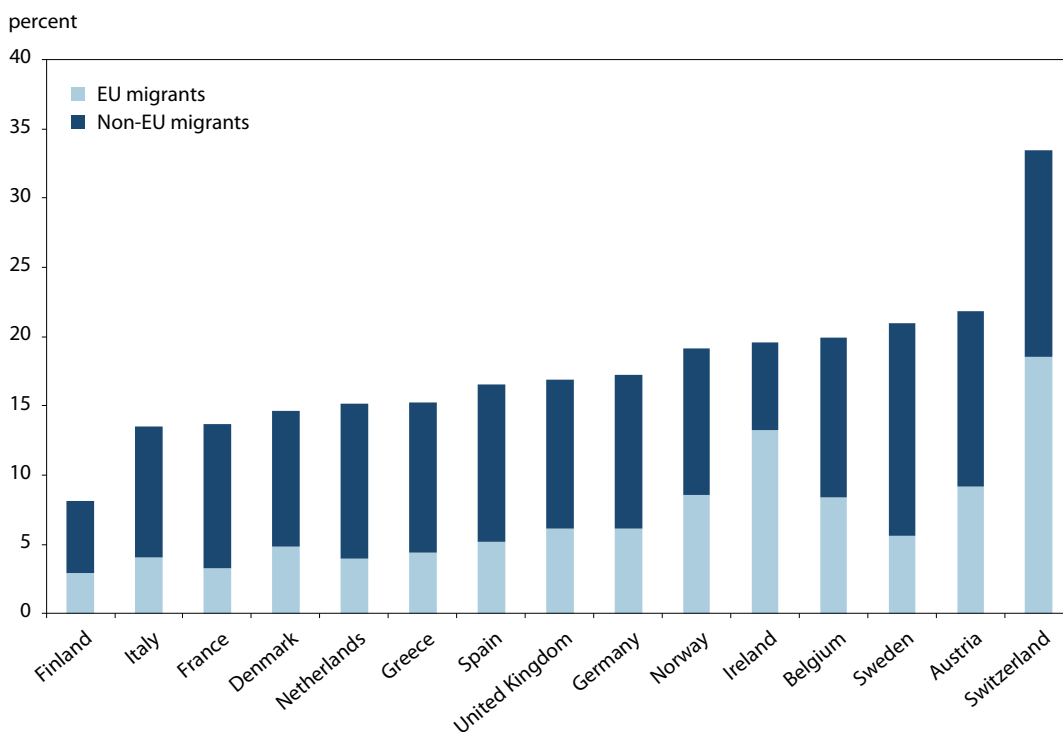
2. See the Article 50 letter at www.telegraph.co.uk/news/2017/03/29/article-50-brexit-letter-read-full. According to EU chief negotiator Michel Barnier, the actual timeline for a successful Article 50 negotiation is just 18 months, in order to allow for EU institutions, governments, and national parliaments to ratify an agreement in time.

3. See Council of the European Union, "European Council (Art. 50) guidelines for Brexit

Negotiations," www.consilium.europa.eu/en/press/press-releases/2017/04/29-euco-brexit-guidelines.

4. Others such as Hix (2017) and Wesemann (2017) have also made similar proposals.

Figure 1 Migrant share of working age population (15 to 64 years), by region of birth, 2016



Sources: Eurostat. Data on Germany are from comparable German sources at DeStatis.

entitled to apply for regular UK citizenship after a period of, say, five years—with limited paperwork.⁵

The EU-27 would find it politically impossible not to reciprocate such a bold statement of European spirit by the May government. In fact, as noted by Portes (2017), the EU-27 negotiating mandate explicitly calls for precisely such a comprehensive reciprocal deal on immigration. In turn, Prime Minister May would know that the significant long-term economic benefits of granting non-UK citizens these rights would defuse domestic political opposition. She would know, too, that such an offer would lead to the only workable solution enforceable by EU governments and fair to European citizens (Institute for Government 2017).

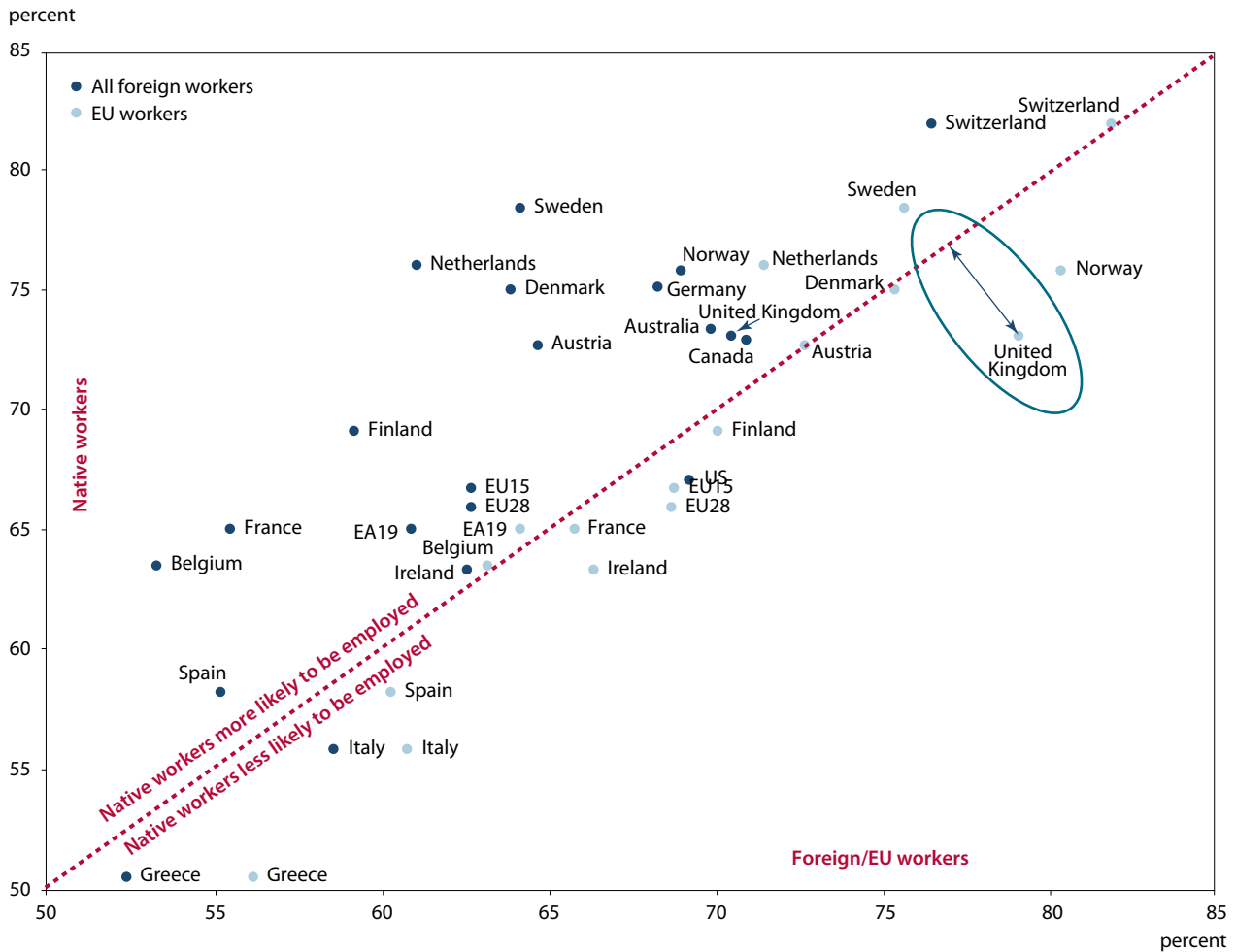
WHY THE ECONOMICS POINTS TO A UNILATERAL PROPOSAL

Europeans have become increasingly concerned about immigration in recent years, as inward migration has increased and economic growth has slowed. Immigration played a major role in the Brexit referendum campaign, as public anxiety over inflows in recent years of EU workers and their families helped swing support toward the Leave camp (Ashcroft 2016). Yet the intense anti-immigration sentiment in the United Kingdom against EU workers is puzzling, because inflows of EU migrants into the country have not been particularly large (see figure 1).

In 2016 the total foreign-born share of the UK working age population was just under 17 percent, placing it in the middle of a comparable group of the 15 early members of the European Union (EU-15) and European Economic Area (EEA) members. Only 6.1 percent of the total UK foreign-born workforce originates in the EU-27, a share that is lower than levels in countries like Germany, Norway, Ireland, Belgium, Austria, and Switzerland. It is therefore wrong to assume that the UK labor market has been flooded with EU-27 workers since 2004, when then prime minister Tony Blair allowed free movement of labor from the new EU member states. In fact migration of EU workers into other EU-15 countries since 2011, when many of them fully

5. The official EU-27 negotiating position now is that EU citizens with five years of residence in the United Kingdom acquire automatic permanent residency in the United Kingdom. See Joe Watts, “Brussels demands EU citizens in UK for five years get permanent right to stay as Brexit stance toughens,” *Independent*, April 26, 2017, www.independent.co.uk/news/uk/politics/eu-brexite-stance-talks-downing-street-jean-claude-juncker-michel-barnier-theresa-may-commission-a7702526.html.

Figure 2 Total employment rates (ages 15 to 64 years), by country of birth, 2015



Sources: Eurostat; Organization for Economic Cooperation and Development.

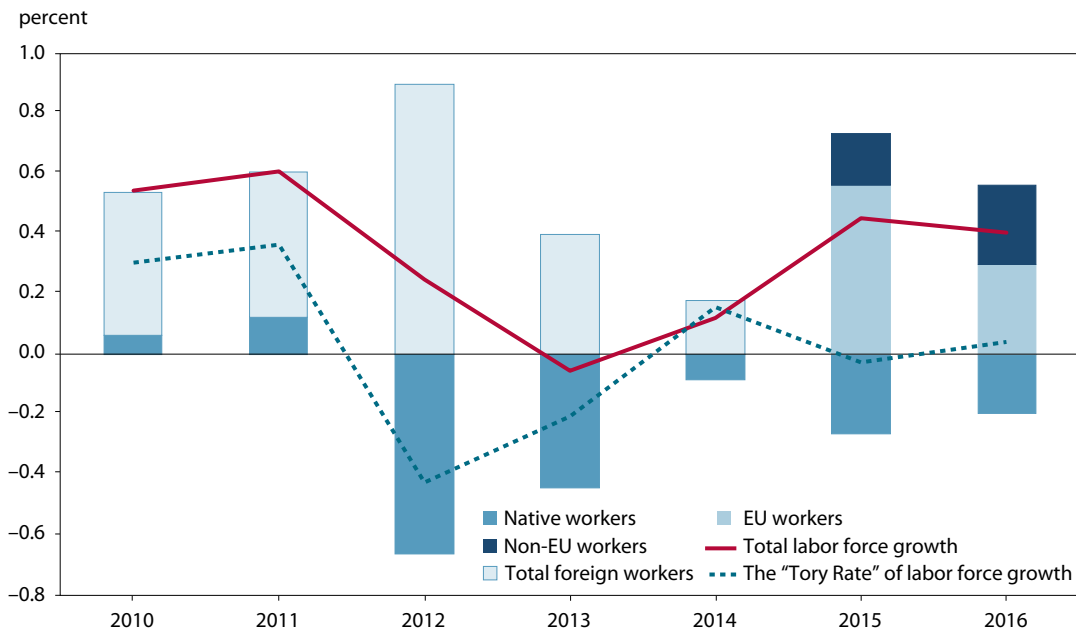
lifted labor restrictions on new EU members, has been more rapid than into the United Kingdom since 2004. The fact that there is no discernable anti-EU worker sentiment in other EU-15 members accentuates the uniqueness of this sentiment in the United Kingdom.

This suggests that the Leave campaign effectively tapped into the general anti-immigration sentiment in the United Kingdom and channeled it against EU-27 workers specifically to drive the Brexit vote. But as the Brexit vote recedes, anti-EU worker sentiments are likely to abate—because Brexiteers are no longer drumming the EU-immigration link into UK voters’ heads as they did during the campaign—making it possible for the prime minister to make concessions on the status of workers and families already living in the country.

The United Kingdom has only an average number of EU-27 workers, but their job success relative to native workers in the UK labor market is far from average, as illus-

trated in figure 2. Countries with native workers less likely to be employed than foreign-born immigrants are located below the 45-degree line. In most EU countries and also the United Kingdom, foreign-born workers as a group are less likely to be employed than native workers. But foreign-born EU workers as a group on average are more likely to be employed than native workers in EU countries, and nowhere more so than in the United Kingdom (see blue circle in figure 2). EU workers have an employment rate of almost 80 percent in the United Kingdom, 5.9 percentage points higher than native workers, and higher than rates in all other EU members (but lower than in EEA members Norway and Switzerland). In other words, EU workers are an important economic resource in the UK economy

As the UK political debate shifts towards what life after Brexit will look like, it will become increasingly clear that the country will have to retain as large a share as possible of existing EU workers to avoid sudden skill and worker

Figure 3 Growth of the UK labor force (15 to 64 years), 2010–16

Source: Eurostat.

shortages. Many sectors in the UK economy that depend on these workers are bound to support Prime Minister May in unilaterally offering UK citizenship rights, except voting rights, to all existing EU workers.

Figure 3 shows that migrant workers have accounted for the bulk of UK labor force growth since 2010, and since 2012 migrant workers have been the only reason the UK labor force has grown at all, as the number of native workers declined during the same period. Figure 3 also illustrates (black dashed line) what would have happened if the Conservative Party's current immigration policy of limiting the annual flow of new migrants to 100,000⁶ had been in effect: The size of the UK labor force would have stagnated after 2012. Prime Minister May has recommitted to this policy in the current election campaign,⁷ raising the possibility of more labor force stagnation in the future because of the general aging of the UK population.

This illustration suggests that Prime Minister May will not be able to dramatically reduce the level of UK immigration towards the levels called for in the Conservative Party

Manifesto without significantly damaging the UK economy and growth prospects. In fact, she has already admitted to the UK Parliament that "she cannot guarantee immigration will be significantly lower after Brexit."⁸ Those who are against immigration will invariably assail her for failing to reduce immigration, so she might as well at least get an important political return from the EU-27 for breaking promises at home to reduce immigration.⁹ Getting a quick agreement on immigration issues and pushing the Article 50 negotiations forward with a unilateral offer on UK citizenship rights except voting rights for EU workers would be a juicy political reward.

6. Figure 3 is constructed on the highly conservative assumption that all allowed 100,000 new immigrants would be of working age and hence potentially become part of the labor force.

7. Jack Maidment, "Theresa May commits Tories to cutting net migration to the UK to the tens of thousands," *Telegraph*, April 20, 2017, www.telegraph.co.uk/news/2017/04/20/theresa-may-commits-tories-cutting-net-migration-uk-tens-thousands.

8. See the coverage in the *Guardian* at www.theguardian.com/politics/blog/live/2017/mar/29/brexit-theresa-may-triggers-article-50-politics-live.

9. More than two-thirds of UK voters do not believe Prime Minister May will succeed in implementing a policy to reduce immigration to fewer than 100,000 migrants a year. This skepticism should further lower the "political shock" of a change in policy by the prime minister. See Ipsos-MORI, "Most think Theresa May will not achieve her target to cut net migration to the 'tens of thousands,'" *Public Attitudes to Immigration*, May 2017, www.ipsos-mori.com/researchpublications/researcharchive/3872/Most-think-Theresa-May-will-not-achieve-her-target-to-cut-net-migration-to-the-tens-of-thousands.aspx.

HOW LEGAL COMPLEXITY AND ENFORCEMENT OBSTACLES POINT TO A UNILATERAL PROPOSAL

The issue of post-Brexit immigration is not simply about the reciprocal granting of work and/or open-ended residency permits to existing EU citizens in the United Kingdom and UK citizens in the EU-27. The Treaty of Rome¹⁰ has established the free movement of workers and freedom of establishment, thus bestowing upon individuals certain rights as employees and service providers. Over time, however, EU law and administrative practices have greatly expanded EU citizens' auxiliary rights in other EU members.¹¹ The 2004 Citizens Directive,¹² for instance, establishes the rights of entry and residency for up to three months for all EU citi-

The UK offer has to guarantee equal treatment on a large number of issues to be acceptable to the EU-27.

zens and their EU or non-EU family members, including spouses, registered partners, dependent descendants and dependent ascendants; rights of residency beyond three months under many circumstances; and a general right to be treated equally as nationals of the host state (excluding social assistance to economically inactive persons or students during the first three months).

Law-abiding citizens are granted these rights under EU law, and it is therefore highly unlikely that the EU-27 will accept a compromise that reduces these rights for EU citizens in the United Kingdom. In other words, the UK offer has to guarantee equal treatment (e.g., legally enforceable nondiscrimination) on a large number of issues to be acceptable to the EU-27. This issue is the first item—ahead of financial issues—on the EU-27 negotiating mandate, which indicates how important it is to the EU-27.

A sudden change in the legal status of an inordinate number of people not previously tracked by government agencies and administrative measures¹³ could impose significant enforcement costs on government agencies already facing enormous budget cuts in recent years, particularly

in the United Kingdom. The UK and EU-27 governments simply do not know how many UK/EU-27 citizens reside in their respective jurisdictions, how many own property, or have some other affiliation to another EU member state affected by existing EU law. Prime Minister May therefore will have to make a proposal that imposes the lowest possible administrative burden on government agencies. The best offer therefore is granting as many EU-27 citizens in the United Kingdom as possible as many UK nationals' rights as possible.

Figures 4 and 5 show the number of people affected by the immigration decision. More than 800,000 Poles live in the United Kingdom (surpassing even the traditionally largest Indian migrant community), followed by 400,000 Irish, more than 300,000 Germans, 250,000 Romanians, and almost two million other EU-27 citizens. Given the free movement of labor within the European Union, the UK government has kept very limited records on EU migrants, suggesting that only the least disruptive set of immigration rules has any chance of being implemented in a fair and transparent manner.

Meanwhile, approximately 300,000 British citizens live in Spain—two-thirds of whom are over 50 years of age (ONS 2017). Clearly it is not in the UK government's interest to have the majority of this group suddenly move back to the United Kingdom and put additional stress on public services and the National Health Service in particular. A generous UK offer for EU workers would result in such British citizens also receiving reciprocal green card-like status in Spain.

CONCLUSION

Since the Brexit referendum, Prime Minister May has missed several good opportunities to generate the necessary political goodwill across the EU-27. She can still make a unilateral good faith and far-reaching offer to settle the post-Brexit immigration status issue quickly. But she is running out of time as the EU-27 imposes its priorities on the Article 50 negotiations. Without a large political mandate from the electorate, the prime minister could find it increasingly unrealistic to push her agenda. She needs to deliver on the EU-27's demand for "sufficient progress" on immigration and money issues by September or October. If she doesn't, then a transitional agreement or even the most rudimentary sketch of a future UK-EU relationship cannot be agreed to in time to avoid the United Kingdom going off the cliff and leaving the European Union with no access at all to its markets and no guarantees for UK citizens in the European Union. In short, Prime Minister May needs a game changer.

Kickstarting the Brexit negotiations by unilaterally offering to extend UK citizenship rights, except voting

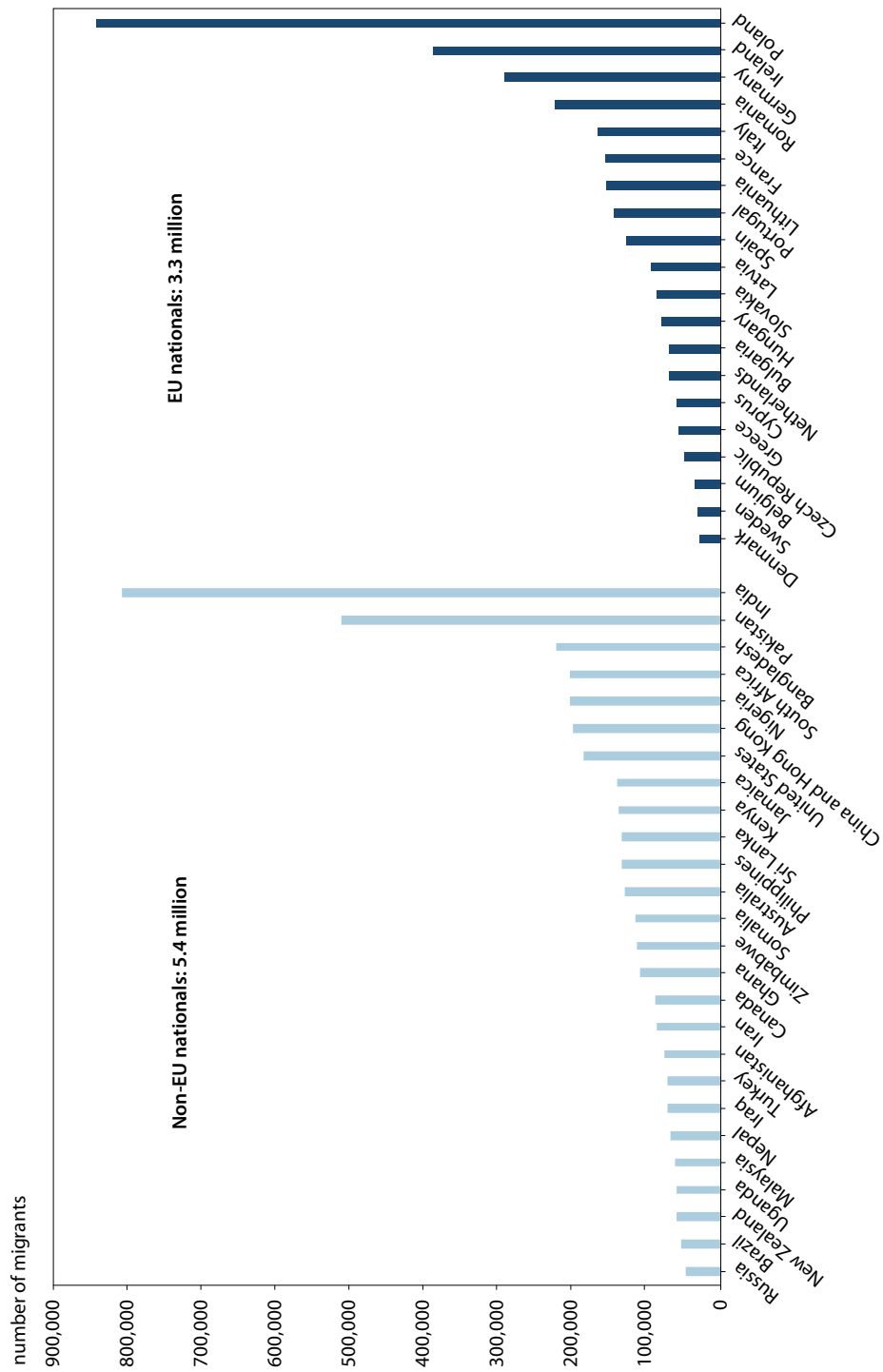
10. Article 3(c) in the Treaty of Rome, http://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf.

11. See HM Government (2014) and House of Lords (2017) for detailed analyses of these developments.

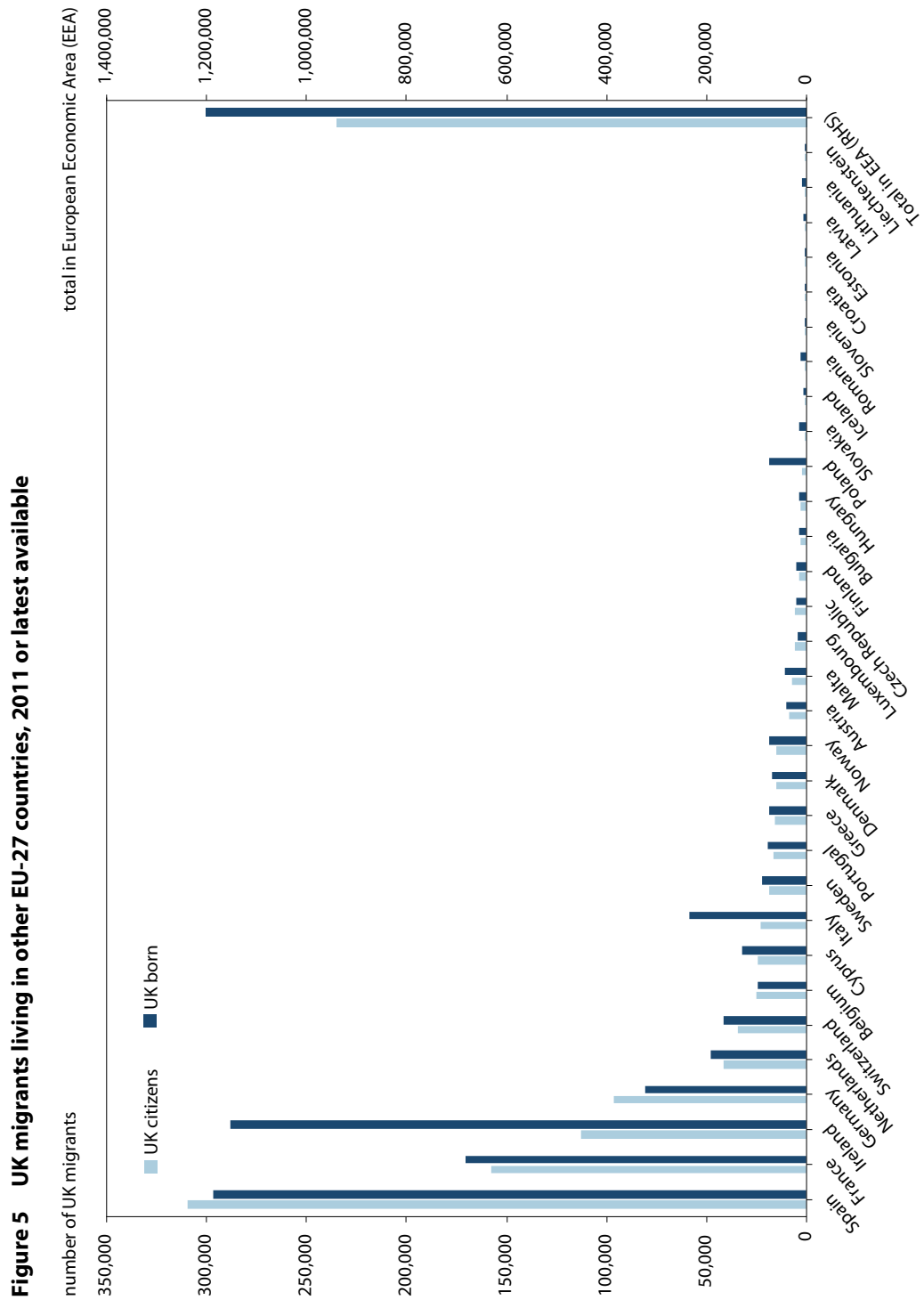
12. See Official Journal of the European Communities (2004).

13. For a detailed discussion of the situation in the United Kingdom, see Portes (2016).

Figure 4 Migrants living in the United Kingdom, by country of birth, 2015-16



Sources: Eurostat; ONS (2017).



Source: ONS (2017).

rights, to all EU citizens residing in the United Kingdom on March 29, 2019, can overcome these obstacles. A UK offer should include full work and residency rights as well as auxiliary rights possessed by UK citizens, except the rights to vote and to receive some social services. Moving now would strengthen the British hand in negotiations and serve the United Kingdom's economic interests, while defusing anger among those who actually are sympathetic to immigration

in Britain. Most important, a British gesture along these lines is sure to be reciprocated by the EU-27, smoothing the way for successful Brexit negotiations.

With her reputation as an immigration hardliner, Prime Minister May has the latitude to launch such a "Nixon goes to China" initiative, knowing that the alternative is a disorderly Brexit jeopardizing the future cohesion of the United Kingdom itself.

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