

Not being smart about Article 50: the strategic considerations of an early 2017 notification

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Theresa May has recently [announced](#) that negotiations for exiting the EU will begin by March 2017. What this means is that the composition of the Council of Ministers at that time is known – and it does not look likely that it will draw up a negotiating mandate that meets the UK's main demands: lowering immigration and preserving market access. A late-2017 notification, however, following key elections across the EU, might have been a better alternative, writes [Kim Kaivanto](#).



The UK is facing an intractable dilemma. Following the Brexit vote, and with immigration having been at the [centre of the debate](#) during the campaign, reasserting control over immigration is an imperative, red-line issue – on grounds of democratic principle. Achieving near-current levels of market access is, from an economic standpoint, also a red-line issue. If Article 50 were triggered in early 2017 as announced, it is inconceivable that these dual demands could be met. In all likelihood, current market access levels would be sacrificed, and current [indications](#) suggest that the [Fox–Johnson–Davis](#) trio have already made peace with this sacrifice.

In this bleak wasteland of negotiating prospects, there was nevertheless a [little discussed](#) scenario which had at least the potential to deliver a workable solution to the UK's otherwise-irreconcilable dual requirements. Of course, many other factors could have still intervened, including several Eurozone states seeking to 'repatriate' much of London's service-sector business – and all that comes with it – from its current, somewhat aberrant location within the heartland of Anglo-Saxon capitalism back to a reassuring subordination under civil-code law, continental commercial culture, and ECB supervisory remit.



Effectively, the UK has only one strategic lever, and this is firmly in Theresa May's hands: choice over when to trigger Article 50.

This is not solely a technical question, nor a readiness one, nor a question of the practicalities of doing it at a time when the current French and German governments are in situ. Neither is it merely or solely a question of minimising economic and political uncertainty, which has a deleterious effect on investment and growth, as well as on how individuals plan their lives. There is, in addition to these considerations, a case to be made for triggering article 50 later in 2017, so as to allow incipient political changes within EU27 countries to become reflected in national governments – or indeed referendum outcomes.

Joseph Muscat, the PM of Malta and incoming President of the European Council, has recently given [a preview of the initial post-notification sequence of events](#): “Once the position of British government is determined, then the EU side will take a month, a month and a half to come together, draft the lines of engagement, draft a mandate and then the negotiations will start ... there will be a unified position where the EU Council will give a mandate to the Commission to negotiate.”

The composition of the Council of Ministers when the UK triggers Article 50 is therefore crucial, as the Council is the conduit through which changed reality at the member-state level is transmitted to the European-Commission level.

The coming year, 2017, will see elections in France, Germany, the Czech Republic, Hungary, Liechtenstein, and The Netherlands. Leaving Liechtenstein aside, the direction of domestic political changes in each of these countries is likely to yield governments more favourable to the notion of controlling migration. These countries have a more differentiated conception of migration than is currently the case in the UK, but there is nevertheless a very real possibility that the present surge of anti-immigration nationalism will result in a late-2017 European Council that has markedly different attitudes toward the UK's desire to control migration than the current.

Recall that, immediately after the UK referendum, politicians in numerous EU countries – namely [Germany](#), [The Netherlands](#), [Sweden](#), [Denmark](#), [Finland](#), [France](#), and [Austria](#) – either called for, or threatened to call for their own in-out referendums.

In Germany, the *Alternative für Deutschland* (AfD) party has scored a sequence of state-parliament election successes, including in Angela Merkel's home state of *Mecklenburg Vorpommern*, and most recently in [Berlin](#). Originally an anti-Euro party, it has since shifted toward an anti-immigration, anti-Islam, and anti-centralisation (i.e. anti-EU-federalist) platform. It is on course to [set the agenda](#) for – and to [win seats in](#) – the September 2017 *Bundestag* elections. Furthermore, [several](#) of its [candidates](#), including its chair [Frauke Petry](#), have called for a 'Dexit' referendum. Already, Angela Merkel has begun to adjust her position toward the right, admitting the need for more [control](#) at Germany's borders.

In France, Nicolas Sarkozy has promised that, if elected president in May 2017, he will lock down the country's borders until the Schengen agreement is renegotiated. Meanwhile, Marine Le Pen has vowed to hold a 'Frexit' referendum if she is elected. Her [platform](#) is explicitly anti-immigrant, anti-multiculturalist, anti-Islam, [anti-burkini](#), anti-federalist, pro-sovereignty, pro-borders, and pro-French-identity. She is [favourite](#) to win the first round of the presidential elections.

Anti-federalist sentiments are also strongly present in Hungary, Poland, Slovakia, and the Czech Republic (the Visegrad four), and less strongly in The Netherlands, Italy, and even Belgium. These popular movements in key EU27 countries are undermining the preconditions that underpin the consensus in favour of unconditional freedom of movement. Nevertheless, even if consensus is eroded at the member-state level, it is not a foregone conclusion that the European Commission will immediately mirror this change.

The European Commission remains the primary bottleneck: commission officials are the UK's immediate negotiating counterparts and they are tightly bound to upholding and operating within the stipulations of the [Lisbon Treaty](#) – in particular the four freedoms, EU citizenship, and non-discrimination on the basis of nationality.

David Cameron's pre-referendum attempts to extract freedom-of-movement concessions faltered precisely on the point that such concessions – then as now – technically require a treaty change. And there was [no appetite](#) for such [treaty change](#) prior to the referendum.

Theresa May's task therefore is to apply sapience – wisdom and judgment in the face of uncertain circumstances – to this strategic-timing question. For an early-2017 Article 50 notification, the composition of the Council of Ministers is known. But for a late-2017 notification, the composition of the Council of Ministers is uncertain. The direction of its likely shift is known, but with limited precision. Appetite for change – even treaty change – is clearly growing, albeit unevenly across EU27 countries.

Could a late-2017 Council of Ministers draw up a negotiating mandate that is materially worse for UK interests? The answer depends partly on the degree of imagination required of a credible response. But with no promises currently on the table, what would have been at risk if Theresa May were to have opted for the late-2017 alternative? As it stands, the announced timetable dramatically increases the odds of a 'hard Brexit' featuring significant non-tariff barriers for UK service exports.

About the Author

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