

BREXIT - You Cannot Put a Price Tag on Friendship...

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When I was shopping at the Marina Bay Sands Mall in Singapore some couple months ago, a young Singaporean approached me and politely asked me to participate in a survey. "Where are you from?" the girl stated her first question.

"From Prague, Czech Republic..."

She smiled and her view gave away her confusion. Obviously, she did not have the slightest idea about my country.

"OK, from the European Union" I gave a try after an instant of hesitation.

"Ooooh!" she expressed with sympathy... "So your home currency is Euro?" she went on with her second question.

"No, in fact, it is Czech koruna."

"So, why are you in the EU?" the girl came out with a query that was obviously not a part of the official survey.

"Well, the common currency is not the only point... There are the freedoms to travel and to work and... and to settle, there is the common policy to reduce the prices for roaming... I can take my identity card and travel from Prague to Pointe-à-Pitre in Guadeloupe without being checked on the borders... I can..."

"Yet, the Greeks are taking you down and the British are going to leave the EU anyway..." the girl did not lose her countenance.

I resigned myself to giving her a lecture on European policy and history and the only thing I managed to add was: "The British will never leave. They now how much they have been profiting from the integration... They use the referendum only as a leverage for further negotiation..."

She smiled at me back mysteriously...

Masterpiece of provocation and mystification

Having heard the results of the Thursday UK European Union membership referendum, I could not but think back to this story. How overoptimistic I was... Yet the Singaporean encounter was not the only one that presumed the destiny of the British membership in EU that crossed my mind that warm June morning.

In 2009, Entropa, a masterpiece of provocation and mystification, was created by Czech artist David Černý. It was a sculpture that caused a real international and diplomatic stir during Czech presidency of the Council of the EU. The project was commissioned by the Czech government to celebrate the European unity. Instead, to a real dismay of Czech and European diplomats, Mr. Černý created a satirical and controversial piece that depicted pointed stereotypes of the EU member nations. The sculpture resembled the parts of a model kit, containing pieces in the shapes of the 27 member states of the EU. Each piece has a distinctive and sometimes really provocative theme that portrayed stereotypes about the respective country. So Denmark was depicted as being built out of Lego bricks, France was draped in a "GRÈVE!" ("STRIKE!") banner and Sweden, was represented as a large Ikea-style self-assembly furniture box. The United Kingdom, was "included" as a missing piece (an empty space) at the top-left of the sculpture. At the time, this was because of the euro-scepticism... and now, this piece is really going to be absent?

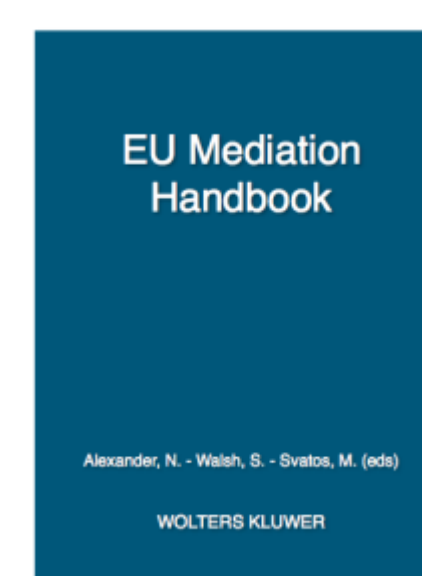


In this post, I intend neither to judge nor to evaluate the free and democratic decision of the British people. The referendum has to be respected as the highest way of expression of democracy. Indeed, using it, people are directly deciding about important political issues. On the other hand, some drawbacks of plebiscite may be pointed out including participants who do not understand what they are voting for and who are googling the meaning of the EU just couple minutes before going to ballot box.

However shocking the results was, we have to think as rationally as possible and we have to discuss all the different issues, not excepting the dispute resolution. Michael McIlwrath has already started to discuss future of London as a seat of arbitration. So, now is the time to ask, how will the Brexit influence mediation...

Scratching out the English chapter

My first direct confrontation with the Brexit consequences was rather anecdotal. Recently, I have spent considerable amount of time working on the EU Mediation Handbook. Edited by me, Nadja Alexander and Sabine Walsh, the book will describe all 28 EU Member States' mediation law and the way they implemented the EU Mediation Directive.



The very morning the results were announced, I and Nadja received an email from Sabine asking us about the destiny of the three British chapters we had just finished reviewing - the UK is represented by three chapters describing England and Wales, Scotland and Northern Ireland. Should we now just leave those three out? This would be definitely a pity because of two reasons. First, for they have been drafted in significantly good way thanks to their authors, second because those jurisdictions are irreplaceable for mediation users. Fortunately for us, the answer was clear: Since the procedure of leaving the EU will be lengthy, the UK will most probably still be a Member of the EU by the date our book is going to be published.

The end of English mediators?

Well, comparing with the global political and economical impact the recent events will have, this seems as triviality. Yet, there are more serious ones.

One of them is that the mediators from England, Wales, Scotland and Northern Ireland will most probably not be able to act as mediators of European cross-border disputes so easy. As it will be described in mentioned EU Mediation Handbook, there are rather strict conditions upon which citizens from foreign countries may act as mediators in different EU Member States. Those limits, however, do not (and shall not) apply to EU citizens. Let's take an example of a business dispute taking place in Czech Republic that has occurred between German and Irish businesspersons and that concerns a property situated in Prague. Today, only the citizens of another EU Member State can easily claim the status of hosting mediator according to the Czech law. After leaving the EU, it will be really difficult or even impossible for a citizen of the UK to qualify as a mediator. And, similar situation stands for another EU countries too.

Friendship is not for sale

I am more optimistic when it comes to the number of mediation cases that will occur in future as indirect consequence of Brexit. Indeed, one of the ADR advantages is that it may substitute the classical dispute resolution in the cases the legal certainty is jeopardised. This is exactly what we are going to face in coming months, for no one knows what to expect (not even the Brexit defenders). The future regulations and relationships are definitely unpredictable. For the weeks to come, there will be negotiations about the future relationships between the EU and UK. In order to mitigate all the damages, the WIN-WIN principle and maxims of principled negotiation should be applied in those talks. The worst think the rest of EU should do is to try to let the UK to pay for the Brexit. In contrary, we should involve in problem-solving procedure that will enable an out-of-box solution so all the parties will be harmed as little as possible.

Who knows, may be a good mediator will be of essence!

According to me, the EU is far for being perfect. There is always a lot to be improved. Yet, our continent has witnessed the biggest and long lasting prosperity with no wars. Immigration and financial crisis are indeed important issues. Yet I am pretty sure the generation of my grandparents would have happily exchanged their concerns for ours. They lived in 30's in central Europe...

Further, the EU is not only project, it is also a mission we owe to future generations. It is not only about money and exact figures, it is also about friendship... and you cannot put a price tag on friendship.