

BREXIT: A TALE OF TWO (FINANCIAL) CITIES. MADRID'S BID TO REPLACE THE CITY

The Brexit referendum was preceded by verbal clashes with neither camp being meticulous about spelling out the truth. With the result in, the practical consequences remain unclear and the ground is ripe for more half-truths and wild bets. However, while the Continent remained rather passive before the vote, Europe is now joining in the mix of speculation and wishful thinking and discussions rage on as to which European city will replace London as a financial centre now that Brexit has supposedly consigned The City to economic death row. Lawyers are wading into the fray as many of the arguments are pseudo-legal in nature.

Madrid is also putting itself forward as a substitute for The City: the Spanish financial system has been thoroughly cleaned up, two Spanish banks are major world players, the economy is growing at 3.5% a year and anti-establishment forces were defeated in the recent general elections. Madrid is also a vast and vibrant city with even vaster underdeveloped areas (such as the Chamartín project, within a walking distance from the financial centre). Cristina Cifuentes, head of the Madrid Regional Government has pushed the bid and appears to be backed by the Spanish Government and by Madrid mayor Manuela Carmena.

Branches of non-European financial institutions, international banks, clearing houses and all other institutions headquartered in London are invited to settle in the heart of Iberia. A modern tale of two cities will see the new Darnays and Cartons moving from London not to Paris and the excesses of the revolutionary "Terreur" but to Madrid, where the wheels of finance would continue to motor on.

But Sydney Carton was a lawyer and he would pose pertinent questions before emigrating to the plains of Spain.

His first questions could centre on Brexit itself, irrespective of the proposed destination. Should I wait to see what the UK's status will be post-Brexit? Would I be stultified if I relocate and the UK strikes a deal with the EU on satisfactory terms for The City? The first lesson to be drawn from Brexit and the ensuing turmoil is that one should not take decisions which are both uncertain and irreversible: a perpetual option, if in doubt, should not be struck. The lesson still stands: do not exit London until you can reasonably predict what your fortunes will be under the new UK-EU accord.

The UK may re-accept the Single Rulebook, UK judgements may continue to be recognised in Europe and UK institutions may be able to keep their European passports. The UK may become a mere rule-taker but when you run a business rather than a Government, why care?

But were The City to conclude that the march to the Continent is necessary, does Madrid make sense as a venue?

We do not know for sure yet. The choice should not really rest on financial regulations or the passport rules, since by definition, they apply equally in all contending venues. It is what has not been harmonised and the non-statutory infrastructure which will mark the difference.

Take contract law: France has just ordered a root-and-branch reform of the Civil Code. But read new section 1112-1 for instance: would you, as a vendor or lender, like to be under the (vague) public policy duty to provide pre-contractual information to the other party? Spain has no such duty but it is true that the last great modernisation of the Spanish Code was in 1974 and, for instance, it still enshrines the mysterious concept of "cause" while the French have just got rid of it.

On insolvency, European substantive harmonisation is in the works but still some way off. In the meantime, you have to decide if the French "sauvegarde" is better or worse than the Spanish "homologación" and there is no unequivocal answer to this question.

Spanish labour laws are now much more flexible and allow for company-specific collective bargaining agreements, while the French Government is still struggling to do the same with the Labour Code reform presented in March 2016.

Corporate income tax rates remain non-harmonised. We do not expect any of the larger European countries to fiercely compete for the lowest rate. Personal income tax rates also vary greatly: the marginal rate in Madrid is 43.5% while it appears to be effectively higher than 45% in France.

The Spanish judicial system has improved and statistics place it around the European average in terms of waiting times for final judgements.

To conclude, if the Madrid bid turns into a feud with Paris or Frankfurt, Brexit after dividing the British will go on to cast the apple of discord into the Eurozone. We have to remain on the alert: this is just the beginning.

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