

BAR BULLETIN



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Will We See a ‘European Spring’ This Year?

By **Larry G Johnson**

In the December 2016 issue of the Bar Bulletin, I asked, “America, Is It Time for a Divorce?”¹ The article referenced the CalExit secessionist movement, but Europe may beat California to a breakup if coming events culminate in a partial or total dissolution of the EU.

If that happens, and depending on the aftermath, such a disintegration could cause serious legal uncertainties for U.S. enterprises engaged in European commerce and for their lawyers. But it could also open the door to new opportunities.

Remember the “Arab Spring” back in 2011, when mobs took to the streets, demanding democracy? That looked so promising, didn’t it? But with few exceptions, that promise ended in dismal failure.

Will we now see something similar, if less drastic, happen with what some are calling the “European Spring” of anti-EU independence? Right-leaning, populist parties in Europe, some of them springing up brand new, think so.

Several key elections are taking place this spring and summer in Germany, France, The Netherlands and possibly Italy. A surging anti-immigrant nationalism in those countries may give the *coup de grâce* to an EU already teetering on fiscal collapse due to the inflexible single currency, the euro, and to growing separatist movements in countries such as Spain and Belgium.²

A Roster of Bold, New Political Faces

If you are not familiar with the names of European politicians such as Frauke Petry, Marie Le Pen, Geert Wilders or (my favorite-sounding name) Beppe Grillo, you soon will be. For better or worse, these people are, in vary-

ing degrees, Europe’s versions of Donald Trump. They are taking or will soon take a leading role in their countries’ futures.

Even if they don’t garner a majority of votes in each country, under the European parliamentary systems they could exact a big price if needed and asked to be part of a governing coalition, namely: their local flavor of Brexit.

A common theme from these populist upstarts is the demand to take back sovereignty that they perceive was excessively ceded to arrogant, unelected EU bureaucrats in Brussels.

We Have Seen This Before

Breakups in the combinations and alliances of European countries are nothing new. Less than 100 years ago, following World War I, the Austro-Hungarian Empire (in its day a kind of proto-EU with 11 official languages and dozens of nationalities) was broken up along mostly ethnic lines. In its place today are Austria, Hungary, the Czech Republic, Slovakia, Slovenia, Croatia, Romania, Bosnia and Herzegovina, Montenegro, and parts of Italy, Poland, Serbia and Ukraine.

Like the EU, Austria-Hungary had a single currency. Its doddering old Emperor Franz Josef did his part to help plunge Europe into The Great War after a Serbian separatist assassinated his nephew, the Archduke Ferdinand, in Sarajevo. The archduke was the presumptive heir to the throne.

More Opportunities for U.S. Law Firms

The splintering of that moribund empire into its constituent parts eventually made them tantalizingly small targets for Hitler’s expansionist aggressions. And after a number of these countries again formed and then fell out of another inte-

gration known as Yugoslavia, these states became once again an arena for warfare and atrocities during the 1990s.

So, what does a splintered EU and a weaker Europe portend in the way of ramifications for international business, and in the dilution or disappearance of EU laws and regulations?

If the populists have their way, will there even be a two-year transition period for separation such as afforded the UK under Article 50 of the Treaty of Lisbon, or will there be no transition possible at all if there is no EU left standing?

In my commercial and e-discovery law practice, with eight European languages under my belt from schools and years spent in Europe, I can perceive many profitable opportunities for American lawyers working with a newly decentralized Europe.

For instance, if some countries chose to adopt or allow standard American digital information protection and privacy practices, new vistas for expanded and cheaper international dispute resolution could open up, based chiefly on an assumption of broader access to electronically stored information.

That could be a refreshingly transparent change from the current economic waste and hypocrisy of European companies that preach privacy while looking for ways to sue one another in U.S. courts in order to find advantage and leverage under our relatively more unfettered discovery rules.³

The Other Side of the Coin — the Marketing Advantage in “Super Compliance”

Germany has taken the lead in expanding EU data privacy legislation and regulations.⁴ Beyond that, it has passed even more stringent data privacy laws

applicable within its borders, thereby making something like American-style discovery in litigation as we know it even more difficult to virtually impossible.

Some American companies see an advantage, however, in pegging their data confidentiality compliance policies to the higher, stringent German standards. Hillery Nye, in-house counsel and chief privacy officer for Seattle-based Glympse, Inc., a real-time location-sharing technology company, says:

We are living in an unprecedented time when it comes to privacy. The transfer of data across borders has no respect for the Internet. Often small companies don't have the team of experts and financial resources to proactively navigate this minefield of technical and legal hazards. We have made compliance with international law a priority and demonstrate that by having a data center for our European customers located in Germany.

Could the Expected 2018 EU Data Privacy Regulations Die with the EU?

The ambitious new EU General Data Protection Regulation slated for May 2018 may not come to pass if the EU itself

crumbles.⁵ Separate bilateral agreements between the U.S. and potentially each newly independent European country could significantly transform not only many trade deals, but the scope and breadth of international dispute resolution policies and procedures as well.

How far that trend could go is anybody's guess right now, but my bet is that, despite broad European populist sentiments, global economics will continue to push for ever more information access and transparency, driven primarily by the economic interests of the most dominant entities. Data make for sales, sales make for profits.

And money, as they say, talks, and (keeping this clean) everything else walks. ■

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¹ KCBA Bar Bulletin, December 2016 at 20: <https://www.kcba.org/newsevents/barbulletin/BView.aspx?Month=12&Year=2016&AID=article13.htm>.

² For an eye-popping list of the dozens of European separatist movements, check out https://en.wikipedia.org/wiki/List_of_active_separatist_movements_in_Europe.

³ It will be interesting to see how far the EU may go to protect the privacy of European-generated data stored outside its borders. GDPR Article 45 "extends data protection requirements to international companies that collect or process EU citizens' personal data, subjecting them to the same requirements and penalties as EU-based companies." <https://digitalguardian.com/blog/what-gdpr-general-data-protection-regulation-understanding-and-complying-gdpr-data-protection>.

⁴ See, e.g., the EU compliance requirements slated for 2018: "5-Step Guide For GDPR [General Data Protection Regulation] Compliance: A Guide For Constructing Your Planning Timeline," at http://go.druva.com/druva-it-guide-5-step-GDPR-compliance-SEM.html?utm_medium=cpc&utm_source=paid-search&utm_campaign=US-Governance-GDPR-Data-Protection&utm_content=&utm_adgroup=eu-data-privacy&utm_term=eu%20data%20privacy%20legislation&gclid=CjwKEAIA6OnFBRDcgt7YmPKI33ESJACJoTjYAE5dzlNuteEISAEM-QJp1dVmvU7p9y06RmbxjlsMtBoC8WXw_wcB.

⁵ The 2018 GDPR is seen by some critics as an example of loathsome, draconian overkill. According to the document cited in note 3, "Contrary to popular belief, this new regulation will impact most multinational companies around the world, not just those based in the EU."

According to Gartner, Inc., a U.S. information technology research and advisory firm, "By the end of 2018, over 50% of companies affected by GDPR will not be in full compliance with its [sic] requirements." The fines for non-compliance are hefty — up to 4% of annual revenue. Companies doing business in the EU will have to have a certified data protection officer on staff who agrees to be personally liable for any data privacy breaches.