



**FRANS TIMMERMANS**

First Vice-President

Brussels, 12/06/2018

*Honourable Members,*

*I would like to thank you and the co-signatories for your letter of 11 April 2018 in which you express concerns regarding the use of practices known as SLAPPs (Strategic Lawsuits Against Public Participation) and call on the European Commission to propose legislation that would curtail these practices.*

*The Commission is extremely attentive to defending and protecting media freedom and pluralism within its competences. Media freedom and pluralism are fundamental rights enshrined in Article 11 of the Charter of Fundamental Rights of the European Union and constitute essential foundations of our democratic societies. The targeted abuse of defamation laws can have a chilling effect on journalists and thus pose a serious risk to the public's right to information.*

*In accordance with the above, the Commission is committed to support those fundamental values within the remit of its competences and has carefully considered your proposals to introduce legislation at European level to limit recourse to SLAPPs.*

*It is important to underline that although freedom of expression and freedom to receive and impart information are fundamental rights protected under the Charter of Fundamental Rights, the Charter provisions do not extend in any way the competences of the Union as defined in the Treaties. In order for the Commission to be able to propose legislation related to the use of SLAPPs, it remains therefore necessary to anchor such legislation in a Treaty provision conferring specific competence on the Union to legislate on that matter.*

*Having regard to the relevant Treaty rules as interpreted by the Court of Justice of the European Union, the Commission concludes that there is no Treaty provision conferring on the Union a specific competence to harmonise substantive defamation laws with a view to address and end the so-called SLAPP lawsuits.*

*David Casa  
Monica Macovei  
Stelios Koulogioui  
Ana Gomes  
Maite Pagazaurtundua  
Benedek Javor  
Member of the European Parliament*

*However, in matters of international jurisdiction and mutual recognition of judgments in civil and commercial matters, the European Union has exercised its competence under Articles Article 67(4) and points (a), (c) and (e) of Article 81(2) Treaty on the Functioning of the European Union (TFEU). These matters are now governed by Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) - hereinafter Brussels I Regulation (recast). Brussels I applies solely between EU Member States and does not create obligations to recognise and enforce judgments from non-EU jurisdictions. Recognition and enforcement of judgments from 3<sup>rd</sup> States, such as judgments delivered in the USA against Maltese residents, remain governed by national laws of the EU Member States so that Member States have the possibility to lay down the grounds for refusal they consider appropriate.*

*In the Commission's understanding, national laws in relation to the recognition and enforcement of judgments from 3<sup>rd</sup> States provide for various refusal grounds but they all enable refusal where the foreign judgment is not compatible with the ordre public of the State where recognition or enforcement is sought – e.g. where constitutional principles such as the freedom of the press are at stake or where the defendant did not have an opportunity to defend himself in the proceedings.*

*The Brussels 1 Regulation (recast) also governs the possibility for cases on civil and commercial matters to be sued in other EU Member States. National laws cannot restrict free circulation of judgments delivered in other Member States and their enforcement beyond that what is allowed under the regulation. National legislation providing for exclusive jurisdiction of national courts in relation to proceedings in respect of publications made by a person domiciled or resident within that country would not be in line with the Brussels I Regulation (recast) which gives several options to the plaintiff where to sue the defendant. Overall, these rules on jurisdiction (including in tort matters) are aimed to ensure the close connection between the dispute and the court competent to deal with it, as well as to prevent artificial choice of litigation forum. Rather extensive case law by the CJEU gives further guidelines on the application of tort rules in defamation cases. In view of the Commission, in conjunction with the possibility to refuse recognition and enforcement in extraordinary cases, this constitutes a carefully calibrated system of international jurisdiction.*

*Let me conclude by drawing your attention to some of the actions the Commission is taking forward to sustain media freedom and pluralism. The Commission is, for instance, currently funding projects run by the European Centre for Press and Media Freedom (ECPMF) in collaboration with several partners. The projects provide practical and legal help to journalists under threat, maintain a mapping platform reporting threats to media freedom and organise training in digital self-defence for journalists.<sup>1</sup> Moreover, on 23 April 2018, the Commission adopted a package of measures to strengthen the protection of whistleblowers at EU level, including also those who act as journalistic sources<sup>2</sup>. The Commission also noted the concerns of the former OSCE Representative on Freedom of the Media on the Maltese draft law updating national regulation on defamation, libel and slander. The Commission welcomes that during the legislative process in Malta, certain problematic draft provisions, such as an obligation for website editors to register with the Media Registrar and a significant increase of libel damages, were addressed.*

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<sup>1</sup> <https://ecpmf.eu/get-help>

<sup>2</sup> See, in particular, the Commission Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of persons reporting on breaches of Union law, COM(2018)218: [https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-218\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-218_en).

*Please be assured that the Commission will continue to follow developments in Malta and defend and protect media freedom and pluralism within its competences.*

*Yours faithfully,*

A handwritten signature in black ink, consisting of a large, sweeping initial 'F' followed by a series of loops and a horizontal line extending to the right.

*Frans Timmermans*