



FRANS TIMMERMANS

First Vice-President

Brussels, 12/06/2018

Dear Ms Gomes,

Thank you for your letter of 20 April 2018 concerning the revelations of the Daphne Project consortium of journalists. I would like to reiterate that the Commission expects an independent and thorough investigation of the murder of Ms Daphne Caruana Galizia. We have urged – and continue to urge - the authorities to continue the investigation until those who perpetrated this heinous crime, but also those who gave the instruction for the assassination have been found and justice is served. No stone should remain unturned and we need to come to full disclosure on what has happened, why it has happened and who is responsible. The Commission is ascertaining every new piece of information brought to the table, including those brought by the "Daphne Project". Should the Commission see scope and determine it has a competence to act on that information, we will certainly do so.

I strongly disagree with your characterization of the European Commission as "unacceptably complacent". Quite to the contrary, the European Commission is carefully assessing the situation in Malta and continuously monitoring developments. The visit to Malta of Commissioner Jourová 14-15 June will be another occasion to take stock and continue the on-going dialogue with the Maltese authorities aimed at solving the existing problematic issues, including those related to the concerns flagged by the ad hoc Delegation on the rule of the law in Malta you led last year.

On anti-money laundering policies, your report recommended that the Commission assess compliance by the Maltese authorities with the applicable Union legal framework, especially the application of customer due-diligence provisions.

Last year, the Commission opened formal infringement proceedings against Malta for lack of transposition of the 4th Anti-money Laundering Directive (which should have been transposed before 26 June 2017). While these proceedings are ongoing, Malta notified the transposition of the 4th Anti-money Laundering Directive in January 2018. The new provisions are currently being assessed, as part of the overall transposition checks undertaken by the Commission.

Ana Gomes
Member of the European Parliament
Chair of the ad hoc delegation

Furthermore, in view of completing the Commission action plan on strengthening the fight against terrorist financing¹, and given the need to ensure enhanced cooperation between the Financial Intelligence Units (FIUs), on 17 April 2018 the Commission issued, a proposal for a directive that complements the provisions of the 4th Anti-Money Laundering Directive, including its recent amendments. These recent amendments provide for the establishment of centralised bank account registries or data retrieval systems in all Member States. The proposal will also address the shortcomings identified in a report on access to, exchange, and use of information by Member States' FIUs and the operational cooperation between them.

On the European Banking Authority (EBA), the Commission fully agrees that the Authority should assess whether the Maltese banking supervisors are fully equipped and free from conflicts of interest to perform their supervisory duties. The EBA should also assess whether the Maltese Financial Supervisory Authority has fulfilled its obligations given the apparent lack of action against private banking institutions that continue to hold a licence to provide services in the EU.

As a consequence, the Commission has called on the EBA to ensure that financial institutions established in Malta satisfy the requirements laid down in Union anti-money laundering legislation, in particular by requesting EBA to investigate a possible breach or non-application of Union law by the Maltese competent authorities in relation to Pilatus Bank. As a consequence, EBA has opened a formal Breach of Union Law Investigation in relation to the Maltese Financial Intelligence Unit following Article 17 of EBA's founding regulation.

On the Individual Investors Programme (IIP), work is under way on a fact-finding study to help prepare the Commission's report on such investor citizenship schemes. In the context of this study, we will look at practical implementation of investor citizenship schemes in all Member States where such schemes exist, including Malta. I should underline that the Commission does not 'recognise' or 'endorse' citizenship investor schemes. Whether or not such schemes are in line with EU law is an issue that the Commission is examining on an ongoing basis.

We took good note of the alert made by Mapping Media Freedom on the use of strategic lawsuits against public participation (SLAPP). The practice of SLAPPs are an abuse of defamation laws. Disproportionate lawsuits against journalists can indeed create a chilling effect and are thus a threat to media freedom. The Commission has analysed whether the EU has competence to address the issues raised by SLAPP. However, having regard to the relevant Treaty rules as interpreted by the Court of Justice of the European Union, the Commission has concluded 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 so-called SLAPP lawsuits.

¹ COM(2016) 50 final: 'Communication from the Commission to the European Parliament and the Council on an Action Plan for Strengthening the Fight Against Terrorist Financing', 2 February 2016.

Finally, and more generally, allow me to draw your attention to the fact that in the context of European Semester analysis of Member States' policies and reform programmes, the Commission recently concluded that the Maltese justice system continues to face challenges with regards to its efficiency, a strengthened legal and institutional framework to fight corruption is necessary to ensure a high quality business environment and the effectiveness of Malta's efforts to fight corruption needs to be further improved, especially with regards to the investigation and prosecution of corruption. Improving the governance framework is crucial to preserving Malta's reputation and attractiveness as an international investment destination. Accordingly the Commission has recommended the Council to recommend to the Maltese authority to strengthen the overall governance framework by enhancing the national supervision of internationally oriented financial businesses licensed in Malta, by ensuring the effective enforcement of the Anti-Money Laundering framework and by continuing to step up the fight against corruption.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'F' and 'T' followed by a horizontal line.

Frans Timmermans