

Front Against Censorship

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Legal Rationale for Anti-SLAPP Amendment

The Front notes that previous attempt(s) wherein it was proposed that the domestic (Maltese) courts should have exclusive jurisdiction to hear and determine libel actions against a defendant based or domiciled in Malta would immediately fall foul of private international laws and customs, most especially in the EU context where the Brussels I (recast) Regulation is very clear and leaves little to no room for maneuver.

The Front is also averse to the idea that the law should define what is and what is not “public policy”, namely because public policy is a very fluid term and because it would be inconceivable to define or attempt to define such a broad term. We are also entirely confident that our Courts of Justice are best placed in protecting the country’s “*ordre public*”.

With our draft amendments, we are not limiting or restricting, in any way whatsoever, the right of a third country (EU or otherwise) individual or entity in seeking redress in a foreign court against a Maltese based journalist or newspaper. Nor are we *a priori* determining that the recognition or enforcement of a judgment delivered by a competent court outside of Malta will be outright rejected.

What the Front is saying here is that when a foreign person or entity seeks to enforce a judgment delivered by a competent court outside Malta in the Maltese courts, the latter must be mindful of various fundamental principles which are set out in sub-paragraphs (a) to (c) of sub-article (1) before acceding to such requests.

Sub-article (2) of the draft law caters for the European Union context, wherein mutual recognition and enforcement of judgments is the rule, rather than the exception. Indeed, the current Brussels I (recast) Regulation states in the most unequivocal terms that recognition and enforcement is automatic, without any major formalities being required. It then goes on to establish certain grounds by means of which one can attack the recognition and/or enforcement of a judgement in the enforcing country.

Whilst the draft amendments respect this principle of EU law, we are saying that a Maltese journalist may attack the recognition and/or enforcement of the foreign (EU) judgment on the same criteria listed in paragraphs (a) to (c) as well as any of the grounds set out in the Regulation itself. Thus the amendments accompany

the Regulation by introducing additional rights for the press, rather than limiting or excluding the basic principle of the Regulation.

We are confident that the criteria we have established in the draft amendment are intended to protect individuals (the press in this case) from a manifest breach of a rule of law regarded as essential, or a breach of a right that is recognized as fundamental, in Malta's legal order where enforcement is sought.¹

We also believe that the draft amendment(s) pursue a very legitimate aim – that of safeguarding the free press from financial ruin and thus protecting freedom of expression. We also feel that such amendments are not only justifiable but also necessary in a democratic society and that they achieve a proportionate balance between the rights of the libeled individual on the one hand and the rights of the press on the other.

The Front notes that the rightful place for such law would be in the newly enacted Media and Defamation Act, but remains open to discussion with all interested parties as to its proper placement as well as its content.

In conclusion, it has to be claimed that whilst these amendments and consequential discussion will strengthen the rights of the Maltese press, a concerted effort at an EU level is also required to combat SLAPP actions in general and eventually provide even greater protections.

¹See *Diageo Brands v Simiramida* (Case C – 681/13), Court of Justice of the European Union, 16 July 2015.