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Private international law aspects of the Commission's proposal for a directive on SLAPPs ("Strategic lawsuits against public participation")

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I. The Commission's proposal

A. Context and purpose

On 27 April 2022 the European Commission presented a proposal for a directive "on protecting persons who engage in public participation from manifestly unfounded or abusive

court proceedings ('Strategic lawsuits against public participation')",[1] commonly referred to as SLAPPs. The acronym stands for the targeted use of civil litigation against individuals who seek to protect public interests by exposing and/or criticizing facts or the behaviour of individuals or companies, and who are to be intimidated and silenced by unfounded or abusive lawsuits. According to a study prepared for the European Parliament[2] and backed by the findings of the Commission, such lawsuits are not initiated with the aim of winning the legal battle for themselves. Instead, the aim is specifically to exhaust the resources of the defendants by saddling them with the costs of defending themselves until they give up their criticism or opposition.[3]

SLAPPs were perceived as a problem in the United States already around 1980. It prompted legislation in New York in 2005, and at the federal level in 2010. In the European Union the need for the introduction of anti-SLAPP legislation began to capture public interest following the assassination of a Maltese journalist, Daphne Caruana Galizia, in October 2017. At the time of her death, Caruana Galizia was the defendant in 47 lawsuits in Malta and abroad, brought against her by influential economic and political actors because of her revelations, in print and/or online, of allegedly corrupt practices.[4] Shortly after the assassination, online news reports which reproduced Caruana Galizia's revelations concerning a since-shuttered Maltese Bank (Pilatus Bank) were in the process of being deleted from various news portals in Malta. That removal was not prompted by the violent assassination of a fellow journalist but by the ruinous threats of litigation which, it was confirmed through subsequent events, had no merit whatsoever.

Caruana Galizia's revelations concerning money laundering and corruption were of transnational concern. By silencing the Maltese press through threats of vexatious litigation, it appears that the Bank could have ensured that the online record of their illicit activities was removed altogether and would not, therefore, pose a threat to their penetration of other EU markets. Notably, the Pilatus Bank affair was not an isolated incident. Another Maltese news site, which was established following the assassination of Caruana Galizia, noted a further example in which credible were made to coerce news organisations to delete or alter online content following threats from the concessionaire for Malta's lucrative "Citizenship by Investment" programme.[5]

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[1] COM(2022) 177 final (27.4.2022).

[2] Cf. the study requested by the JURI Committee of the European Parliament „The Use of SLAPPs to Silence Journalists, NGOs and Civil Society" (PE 694.782- June 2021), https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU(2021)694782_EN.pdf

[3] "Arguably, regardless of domestic and international safeguards, civil cases are often much more 'deadly' to a defendant who is stripped out of their rights simply because they cannot afford the process of defending themselves against a party that is far better resourced" (Study quoted at fn. 2, p. 30).

[4] See the European Parliament's resolution *infra*, fn. 6, *sub* J.

[5] Cf. the Study quoted at fn. 2, p. 8 s.

Following a powerful resolution adopted by the European Parliament in November 2021,[6] the Commission took action in April 2022 and presented the abovementioned proposal. The proposed Directive is based on Art. 81(2)(f) TFEU[7] and aims at providing "safeguards against manifestly unfounded or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons, in particular journalists and human rights defenders, on account of their engagement in public participation" (Art. 1).

The core parts of the Directive consist of rules on the early dismissal of manifestly unfounded court proceedings (Chapter III), remedies against abusive court proceedings (Chapter IV), and protection against third-country judgements (Chapter V). A brief mention of Chapters III and IV seems useful before the conflict rules in Chapter V and further aspects of private international law of the proposal will be looked at in more detail.

B. Safeguards in court proceedings brought before the courts of the Member States

The proposed Directive provides two essential safeguards against SLAPPs. The first is the "early dismissal" of court proceedings that are "manifestly unfounded". Art. 9 says that "Member States shall empower courts and tribunals to adopt an early decision to dismiss, in full or in part, court proceedings against public participation as manifestly unfounded." According to Art. 11 an application for early dismissal shall be treated in an accelerated procedure, taking into account the circumstances of the case and the right to an effective remedy and the right to a fair trial. No definition is given of the concept of "manifestly unfounded" or, simply, "unfounded" court proceedings, the latter term appearing in Art. 3 (see below).

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[6] "Strengthening democracy, media freedom and pluralism in the EU", Resolution of 11 November 2021 A9-0292/2021, where the Parliament says (*sub* C) that "in recent years, journalists and media actors in Europe and abroad are increasingly being threatened, physically attacked and assassinated because of their work, particularly when it focuses on the misuse of power, corruption, fundamental rights violations and criminal activities; (...) notes that these threats are not only of a violent nature and that intimidation against journalists also stems from legal, political, socio-cultural and economic pressures".

[7] For the purposes of the judicial cooperation in civil matters, Art. 81(2)(f) TFEU gives competence to the Union to adopt measures aiming at insuring "the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States".

The second safeguard against SLAPPs are remedies against "abusive court proceedings" (Art. 14 s.), such remedies being an award of costs, a decision on compensation of damages, and the imposition of penalties. In Art. 3, the terms "abusive court proceedings against public participation" are defined as meaning

> "court proceedings brought in relation to public participation that are fully or partially unfounded *and* have as their main purpose to prevent, restrict or penalize public participation.[8]
> Indications of such a purpose can be:
> (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof;
> (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
> (c) intimidation, harassment or threats on the part of the claimant or his or her representatives."

It appears from the combined reading of Chapters III and IV that abusive court proceedings which are not "manifestly" unfounded may not lead to an early dismissal, whereas such a dismissal is possible also if manifestly unfounded court proceedings are not "abusive".

II. Conflict rules in the proposed directive

A. Protection against judgments from third countries

SLAPP proceedings against persons domiciled in a Member State may be initiated also before the courts of a third country, and a judgment against the defendant may be given in such proceedings. Whereas a direct protection against third country proceedings and an eventual judgment will normally not be available, Chapter V of the proposed Directive ("Protection against third-country judgments") provides an *ex post*-safeguard by shielding the defendant from the effects of the third country judgment, and by allowing the defendant to seek compensation of the damages and the costs of the third country-proceedings before the courts of the Member State of his or her domicile. According to Art. 17 of the proposed Directive

> "Member States shall ensure that the recognition and enforcement of a third-country judgment in court proceedings on account of public participation by natural or legal person domiciled in a Member State is refused as manifestly contrary to public policy (ordre public) if those proceedings would have been considered manifestly unfounded or abusive if they had been brought before the courts or tribunals of the Member State where recognition or enforcement is sought and those courts or tribunals would have applied their own law."

[8] Emphasis added. It is not required that the proceedings are *manifestly* unfounded.

The rule blocking the recognition of third-country judgments in SLAPP proceedings has a precursor in the law of the United States. In order to protect American defendants from foreign judgments[9] for defamation that disregard the principles of freedom of speech and press as guaranteed by the First Amendment to the US Constitution, Congress adopted in 2010 the "Securing the Protection of our Enduring and Established Constitutional Heritage Act", known under its acronym SPEECH Act.[10] Its core provision provides that

> "a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the first amendment to the Constitution of the United States and by the constitution and law of the State in which the domestic court is located".[11]

A similar rule had already been enacted in 2008 in New York's "Libel Terrorism Protection Act"; it provided that a foreign defamation judgment is not conclusive in New York unless the court before which the matter is brought determines that the defamation law applied by the foreign court "provided at least as much protection for freedom of speech and press in that case as would be provided by both the United States and New York constitutions". However, neither the SPEECH Act nor the New York Act include a rule on personal jurisdiction of US

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[9] In particular judgments from UK courts.

[10] Codified in 28 U.S.C. § 4102.

[11] See 28 U.S.C. § 4102:

"(a) First Amendment Considerations

(1) In general.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that—

(A) the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by the first amendment to the Constitution of the United States and by the constitution and law of the State in which the domestic court is located; or

(B) even if the defamation law applied in the foreign court's adjudication did not provide as much protection for freedom of speech and press as the first amendment to the Constitution of the United States and the constitution and law of the State, the party opposing recognition or enforcement of that foreign judgment would have been found liable for defamation by a domestic court applying the first amendment to the Constitution of the United States and the constitution and law of the State in which the domestic court is located."

courts for claims against the plaintiff in the foreign proceedings for compensation of damages and costs.[12]

To come back to the Commission's anti-SLAPP proposal: Art. 17 of the proposed directive obliges the Member States to provide in their domestic law ways and means to refuse the recognition of a third-country judgment given in SLAPP proceedings. For this purpose, a Member State could rely on the general public policy clause of its domestic law if that clause is deemed to be sufficient to exclude the recognition of SLAPP judgments from third countries.[13] However, it has to be borne in mind that Art. 17 sets out detailed conditions for the application of the clause, which oblige the court to review the foreign judgment as to its substance, i.e. to proceed to a genuine *révision au fond*. Thus, the safer way is probably to enact a specialized public policy clause which includes the conditions stated in Art. 17.

B. A *forum actoris* for claims against SLAPP plaintiffs in third countries

Art. 18 of the proposed Directive provides:

> "Member States shall ensure that, where abusive court proceedings on account of engagement in public participation have been brought in a court or tribunal of a third country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where he is domiciled, compensation of the damages and the costs incurred in connection with the proceedings before the court or tribunal of the third country, irrespective of the domicile of the claimant in the proceedings in the third country."

According to the Explanatory Memorandum, this provision "creates a new special ground of jurisdiction in order to ensure that targets of abusive court proceedings who are domiciled in the European Union have an efficient remedy available in the Union against abusive court

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[12] It may be added that the SPEECH Act includes a provision on jurisdictional requirements relating to the foreign judgment. 28 USC § 4102 further provides:

"(b) Jurisdictional Considerations.–

(1) In general.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation unless the domestic court determines that the exercise of personal jurisdiction by the foreign court comported with the due process requirements that are imposed on domestic courts by the Constitution of the United States.

(...)"

[13] For judgments from EFTA States that are parties to the Lugano Convention, the public policy clause in Art. 34(1) of the Convention may provide equivalent protection.

proceedings brought in a court or tribunal of a third country".[14] The explanation makes it clear that Art. 18 is limited to the issue of jurisdiction whereas the legal basis for the claim itself is to be found elsewhere. The mention of an "efficient remedy against abusive court proceedings" may be taken as a reference to Art. 15 of the proposed directive, which obliges Member States

> "to ensure that a natural or legal person who has suffered harm as a result of an abusive court proceedings against public participation is able to claim and to obtain full compensation for that harm."[15]

Art. 18 says that the special ground of jurisdiction applies "irrespective of the domicile of the claimant in the proceedings in the third country", i.e. the defendant in the action for compensation. This means that the action may be brought in the courts of the plaintiff's domicile also if the defendant is domiciled in a Member State, thus overriding the regime of the Brussels Regulation. If the defendant is domiciled in a third country, the jurisdiction of the courts of each Member State is determined by the law of that State. In any case, Art. 18 obliges Member States to introduce in their domestic law a rule of jurisdiction providing for a *forum actoris*, which would normally be frowned at as exorbitant. In the present context it aims at protecting the SLAPP target as a weaker party who deserves the benefit of a forum at home; at the same time that forum is a *forum legis* as it makes sure that the claim for compensation will be implemented by the courts of the Member States. It is understood that the substantive provision of national law founding the right to compensation is mandatory (i.e. a *loi de police*) and that the competent court has to be apply the provision provided for in the law of the forum.

If the claim is directed against a defendant domiciled in an EFTA State which is a party to the Lugano Convention, the national provision implementing Art. 18 of the proposed directive will not apply. According to Art. 19, the directive "shall not affect the application" of the Lugano Convention of 2007. This provision should be interpreted as meaning that in the

[14] COM(2022) 177, p. 17.

[15] Whether the creation of a substantive rule of this kind is covered by the legal basis provided by Art. 81(2)(f) TFEU (fn. 7) is open to doubt.

relations with the EFTA-Lugano-States the Convention takes precedence over the provisions that the Member States will adopt in order to implement the directive.[16] [17]

II. The private international law context of the proposed directive

A. Jurisdictional issues and applicable law

Except for the provisions on protection against third country proceedings the private international law aspects of SLAPPs are reflected neither in the operative part nor in the recitals the proposed directive. They form, however, an important part of the background of the Commission's proposal and have been addressed, albeit in a cursory manner, in the European Parliament's resolution of 11 November 2021. In order to single out the conflict rules applicable in the present context, the subject matter of SLAPP proceedings needs to be identified. As far as civil claims are concerned, the Commission mentions in the Explanatory Memorandum of the proposed directive that SLAPP claims are often based on defamation but relate also to breaches of other rules or rights (e.g. data protection or privacy laws), and are often combined with damages/tort claims.[18]

(1) Jurisdiction and the "mosaic approach" of the ECJ

It follows from the information just mentioned that in cross-border cases against defendants domiciled in a Member State jurisdiction is governed by Art. 4 and Art. 7(2) of Regulation Brussels Ia (BR), whereas in cases against defendants in third States (other than EFTA-Lugano-States where Art. 2 and Art. 5(3) of the Lugano Convention (LC) control) the law of the forum applies (Art. 6 BR and Art. 4 LC). The BR and the LC offer a number of venues: the SLAPP plaintiff may bring the claim in the courts of the defendant's domicile or in the

[16] If Art. 19 were to be interpreted as a simple reservation in respect of the Convention, Art. 67 of the Convention (concerning the relationship with international conventions) would apply, and according to Protocol 3 national implementing provisions of EU Member States would be treated in the same way as the international conventions referred to in Art. 67(1) of the Convention.

[17] Apart from the Lugano Convention, there are a number of bilateral conventions on recognition and enforcement of judgments between Member States and third countries that have also to be taken into account in the context of Articles 17 and 18.

[18] Cf. also the Parliament's resolution (fn. 6) *sub* H: "SLAPPs are often grounded in claims of defamation, libel or slander, which still constitute criminal offences in most Member States, and SLAPP victims find themselves facing criminal charges while being sued for civil liability purportedly arising from the same conduct".

courts for "the place where the harmful event occurred or may occur", the latter alternative covering, according to the ECJ, both the place where the damage occurred and the place of the event giving rise to it. Since the *Shevill* case of 1995[19] it is also settled case-law that an action for compensation of damage caused by a defamatory article published in the printed press against the publisher may (also) be brought before the courts of each Member State in which the publication was distributed and where the victim claims to have suffered injury to his or her reputation. These courts, however, have jurisdiction to rule solely in respect of the harm caused in the forum state (so to speak a single piece of the mosaic), whereas all the damage caused may be claimed in the courts of the publisher's establishment (which is normally also the domicile of the defendant).

Where personality rights have been infringed by means of content placed online on a website, an additional venue is open for the plaintiff. It follows from the ECJ's *eDate* judgment of 2011 that in such a case an action for liability in respect of *all* the damage caused may also be brought by the victim before the courts of the Member State in which the centre of his or her interests is based (which is normally the victim's habitual residence); in addition, the "mosaic approach" of the *Shevill* judgment also applies to the internet cases, thus limiting the jurisdiction of a mosaic court to the damage caused in the forum state. This case law governs not only where privacy rights have been infringed but also where the action is based on an infringement of competition rules. In December 2021, the application of the mosaic approach in cases of unfair competition has been confirmed beyond doubt in the *Gtflix Tv* judgment, a case where allegedly "disparaging comments" ("commentaires dénigrants") had been published on the internet.[20] It should be noted that, in any case, the mosaic approach is limited to claims for compensation of material and immaterial damage. An application for rectification or removal of the content placed online can only be made before a court with jurisdiction in respect of all the damage as such an application, according to the ECJ, is "single and indivisible".[21]

It appears from this sketchy overview that the jurisdictional environment resulting from the ECJ's case-law on the BR (which is applicable also to the LC) is not only favourable to, but

[19] CJEU, judgment of 7.3.1995 – C-68/93, ECLI:EU:C:1995:61, *Shevill*.

[20] CJEU, judgment of 21.12.2021 – C-251/20, ECLI:EU:C:2021:1036, *Gtflix Tv*.

[21] CJEU, judgment of 17.10.2017 – C-194/16, ECLI:EU:C:2017:766 *Bolagsupplysningen and Ilsjan*.

an outright encouragement of, SLAPP proceedings. As has been observed in the Study prepared for the European Parliament[22]

> **"**A claimant who wishes to act in a manner that is most vexatious to the respondent may choose from a number of techniques. The so-called 'mosaic approach' whereby the claim is split over several jurisdictions has the potential to enable a claimant to exhaust a prospective respondent through multiple contemporaneous disputes concerning essentially the same subject matter."

Without directly referring to the ECJ's case law on the mosaic approach, the European Parliament, in its Resolution of 11 November 2021, called on the Commission

> "to address issues giving rise to forum shopping and libel tourism in the forthcoming review of the Brussels I and Rome II Regulations while also taking account of work carried out at The Hague Conference on Private International Law" (para. 25);

the Parliament further believed

> "that any revision of the relevant rules in the Brussels I Regulation should be properly mirrored by an equivalent revision of the Lugano Convention so as to ensure a cohesive application of international jurisdiction rules in civil and commercial matters beyond the Union and where Union citizens are concerned" (para. 27).

Neither the Resolution nor the preparatory report of the Committee on Legal Affairs make concrete proposals to amend the BR or the Rome II Regulation. We shall come back to this point in a moment.

(2) The law applicable to claims in SLAPP proceedings

It has been mentioned that SLAPP proceedings are often grounded in claims of defamation but may also relate to breaches of rules on data protection or privacy laws, combined with claims of damages. The law applicable to such claims has to be determined according to the conflict rules of the forum state as the Rome II Regulation does not apply to "non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation" (Art. 1(2)(g)). It is submitted in that context that breaches of rules on data protection are also excluded from the scope of the Regulation as these rules belong to "rights relating to personality". Obviously, non-unified conflict rules increase the forum shopping potential resulting from the mosaic approach and give an additional incentive to libel tourism.

[22] Fn. 2, p. 41.

It should not be overlooked, however, that SLAPP proceedings may also be grounded in claims arising out of violations of rules on unfair competition, e.g. if it is alleged that the defendant's publications or actions affect the claimant's business. In such cases the applicable conflict rules are to be found in Articles 6 and 4 of Regulation Rome II. Art. 6(1) provides that non-contractual obligations arising out of an act of unfair competition are governed by "the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected". According to Art. 6(2), where an act of unfair competition affects exclusively the interests of a specific competitor, the general provisions contained in Art. 4 of Regulation Rome II apply; in the present context this will normally lead to the rule in Art. 4(1) which provides that obligations arising out of tort or delict are governed by

> "the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur".

Although the mosaic approach applies also in respect of those proceedings, the fact that the courts will apply the same conflict rules throughout the Member States should normally reduce the incentive for forum shopping. It remains, however, that the applicable conflict rules are but one element that may influence the choice of the forum; other elements, in particular the approach of the courts of the chosen forum to defamation cases, and the practice of these courts in the assessment of damages, may equally intervene.

B. The urge to amend Regulations Brussels Ia and Rome II

Whether the Commission will take up the European Parliament's invitation in the SLAPP Resolution to address issues of forum shopping and libel tourism in the forthcoming review of the Brussels I and Rome II Regulations remains to be seen. Anyhow, its proposal for the anti-SLAPP directive is silent on these issues. It includes rules concerning the recognition of third country judgments and creates a *forum actoris* for claims against SLAPP plaintiffs in third countries. No amendment to Regulations Brussels I and Rome II is proposed. This may surprise at first sight, but could turn out to be a judicious restraint. Indeed, as regards Regulation Brussels Ia, it seems doubtful whether SLAPP proceedings may effectively be countered by amending the rules on jurisdiction. It has been argued that in order to combat vexatious proceedings jurisdiction in defamation cases might be restricted to the default rules of the Brussels/Lugano regime, i.e. the courts of the defendant's domicile.[23] However, this

[23] See the Study for the European Parliament (fn. 2), p. 42.

would fight the symptoms, not the disease. The problem is not created by the rules on jurisdiction, but by the *détournement* of the judicial process. Any restriction of the use of the *forum delicti* in Art. 7(2) BR (Art. 5(3) LC) limited to SLAPP proceedings would lead to a hopeless overloading of the first stage of the proceedings as the SLAPP conditions would have to be argued and proved for the sole purpose of establishing the lack of jurisdiction of the court seised. Here, the system of the proposed directive seems preferable because the proof of the SLAPP conditions will lead to a dismissal of the court proceedings, i.e. a decision on the merits, and not only to a decision on the jurisdiction, i.e. admissibility. Nevertheless, although the Brussels/Lugano regime as such should not be altered, limited amendments might be envisaged where the working of that regime appears to be unsatisfactory. In that respect, the mosaic approach deserves a critical look because it encourages SLAPP proceedings indecently. As it is unlikely that the ECJ will give up that approach in a foreseeable future, a correction can only be expected from the Union legislator, and the forthcoming revision of the Brussels regime offers an opportunity to this end. However, restricting the jurisdiction of the *forum delicti* will be an enterprise whose difficulties should not be underestimated.

As concerns the Rome II Regulation, it is obvious that a possible amendment should close the gap which is left by the exclusion from the scope of the Regulation of obligations arising out of violations of privacy and rights relating to personality. There have been numerous proposals how to close that gap,[24] among which the one presented by the GEDIP in its 1998 proposal for a Rome II Convention will be remembered: obligations arising out of violations of rights relating to personality are to be governed by the law of the country of the habitual residence of the victim of such violations. In any case, the quest for conflict rules in that domain may prove to be less difficult after the withdrawal of the UK from the EU.

III. Concluding remarks

It is perhaps fair to say that the main problems of the Commission's proposal are not in the aspects of private international law but in the implementation of the procedural safeguards

[24] A number of proposals is discussed in the Study for the European Parliament (fn. 2), p. 42 s. The Study favours a rule according to which, in defamation cases, the law of the place to which the publication is directed should apply. If there is no such place, the applicable law should be the law of the place of editorial control. In the absence of either of these places being identifiable, the law to be applied should be the law of the place in which the most significant elements of the loss appear.

introduced by the directive in the law of the Member States. This applies in particular to the concept of "early dismissal" of proceedings, which is not commonly known in the Member States and which may profoundly affect the structure and organization of civil procedure. The same is true for the application of indeterminate legal terms like "manifestly unfounded" or "abusive court proceedings", for which there is little experience in the national systems of civil procedure. Apart from these "technical" problems, an anti-SLAPP instrument invariably creates tensions in the field of fundamental rights. Obviously, the focus of the proposal is on the protection of journalists, human rights defenders and other target groups whose freedom of expression and information (Art. 11 of the Charter) is endangered by SLAPP proceedings. At the same time, Art. 47 of the Charter guarantees the access to justice, and personality and privacy rights of the claimants are protected under Articles 7 and 8 of the Charter. There is a clear need to balance the respective rights of the parties. According to the Commission

> "The procedural safeguards are carefully targeted and leave the court sufficient discretion in individual cases to maintain the delicate balance between speedy dismissal of manifestly unfounded claims and effective access to justice."[25]

In this context, private international law has but a limited role to play. SLAPP proceedings are not brought about by the rules on the conflict of laws. These proceedings are an abuse of the judicial process, and any rule applied to that end is but an instrument of the abuse. In that perspective, the role of private international law is essentially reduced to protecting the SLAPP target against the effects of third-country proceedings that disregard the principles of the directive (Articles 17 and 18 of the proposal), and to limiting the forum shopping potential of the present rules on jurisdiction and applicable law in defamation cases. The latter objective may be achieved by completing the Rome II Regulation by uniform rules on the law applicable to obligations arising out of violations of rights relating to personality. In matters of jurisdiction, where Art. 7(2) BR as interpreted by the ECJ favours SLAPP proceedings in a unacceptable way, a correction by the Union legislator should equally be envisaged.

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[25] COM(2022) 177, p. 12.