

**SUMMONED IN PRELIMINARY RELIEF PROCEEDINGS IN EXPEDITED PROCEEDINGS PURSUANT TO A WRITTEN MANDATE OF 19 FEBRUARY 2018 BY THE PRELIMINARY RELIEF JUDGE OF THE AMSTERDAM DISTRICT COURT**

on the condition that the writ of summons is served on defendants as soon as possible and that the date and time of the court hearing are communicated expediently to defendants, and the draft writ of summons is sent to defendants

Today, the ..... two thousand and eighteen, at the request of:

1. the private company with limited liability **GS MEDIA B.V.**, with its official seat in Amsterdam and its principal place of business in (6001 DA) Weert at De Noord 25, hereinafter referred to as “**GS Media**”;
2. the private company with limited liability **DE PERSGROEP NEDERLAND B.V.**, also trading under the name De Gelderlander, with its official seat in Amsterdam and its principal place of business in (1018 LL) Amsterdam at Jacob Bontiusplaats 9, hereinafter referred to as “**De Persgroep**”;
3. the private company with limited liability **THE POST ONLINE B.V.**, with its official seat in Amsterdam and its principal place of business in (1017 RR) Amsterdam at Kleine-Gartmanplantsoen 10, hereinafter referred to as “**TPO**”;
4. Mr **CHRISTIAAN EVERHARDUS AALBERTS**, residing in  
;

all choosing their address for service in this matter at Haarlemmerweg 333 in (1040 HD) Amsterdam, at the offices of Kennedy Van Der Laan N.V., of which firm *meester* J.P. Van den Brink is appointed as lawyer and will act in that capacity together with *meester* E.W. Jurjens,

**HAVE SUMMONED TO APPEAR IN SUMMARY PROCEEDINGS:**

1. the legal entity incorporated under European law the **EUROPEAN UNION** with its official seat at Rue de la loi/Wetstraat 200, B-1048 in Brussels, Belgium, not having a known address within the Netherlands.

on whom this summons is served by means of:

- a. a copy of this writ, as well as an English translation of this writ, in accordance with Article 56(3) of the Dutch Code of Civil Procedure and Article 14 of EC Regulation number 1393/2007 of the Council of the European Union of 13 November 2007, sent by courier today, to the address of the EUROPEAN UNION, accompanied by the standard form mentioned in Article 8 of the Service Regulation, included in Schedule II to the Service Regulation, with notification that the EUROPEAN UNION may refuse to accept this document if it is not written in a language, or is not accompanied by a translation, as referred to in Article 8(1) of the Service Regulation and that the refused documents are to be returned within the period mentioned in that article,
- b. furthermore, by virtue of Article 56(2) of the Dutch Code of Civil Procedure and in my capacity of transmitting agency within the meaning of EC Regulation number 1393/2007 of the Council of the European Union of 13 November 2007 (EU Service Regulation), I have sent two copies of this writ

#### **TO THE FOLLOWING RECEIVING AGENCY**

##### **Modero Gerechtsdeurwaarders**

Stationsstraat 42

BE-1040 Etterbeek (Belgium)

e-mail: [pgi@modero-brussel.be](mailto:pgi@modero-brussel.be), [cd@modero-brussel.be](mailto:cd@modero-brussel.be)

this transmission was effected today by e-mail, and included the following documents:

- two translations of this writ in the English language and
- the form referred to in Article 4(3) of the said Service Regulation, completed in the Dutch language.

I have requested the receiving agency to serve this writ, accompanied by an English translation of this writ, on the European Union in the manner set forth at 5 of the above-mentioned form “request for service of documents”, i.e. service in accordance with the laws of the requested State (form 5.1).

- c. furthermore, by transmission of a copy hereof and a translation in the English language to the e-mail address [annuaire.interinstitutionnel@consilium.europa.eu](mailto:annuaire.interinstitutionnel@consilium.europa.eu);
2. the legal entity incorporated under European law the **EUROPEAN COMMISSION** with its official seat at Rue de la loi/Wetstraat 200, B-1048 in Brussels, Belgium, not

having a known address within the Netherlands. on whom this summons is served by means of:

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- c. furthermore, by transmission of a copy hereof and a translation in the English language to the e-mail address [federica.mogherini@ec.europa.eu](mailto:federica.mogherini@ec.europa.eu);

3. the legal entity incorporated under European law the **EUROPEAN COUNCIL** with its official seat at Rue de la loi/Wetstraat 175, B-1048 in Brussels, Belgium, not having a known address within the Netherlands. on whom this summons is served by means of:
  - a. a copy of this writ, as well as an English translation of this writ, in accordance with Article 56(3) of the Dutch Code of Civil Procedure and Article 14 of EC Regulation number 1393/2007 of the Council of the European Union of 13 November 2007, sent by courier today, to the address of the EUROPEAN COUNCIL, accompanied by the standard form mentioned in Article 8 of the Service Regulation, included in Schedule II to the Service Regulation, with notification that the EUROPEAN COUNCIL may refuse to accept this document if it is not written in a language, or is not accompanied by a translation, as referred to in Article 8(1) of the Service Regulation and that the refused documents are to be returned within the period mentioned in that article,
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- c. furthermore, by transmission of a copy hereof and a translation in the English language to the e-mail address [annuaire.interinstitutionnel@consilium.europa.eu](mailto:annuaire.interinstitutionnel@consilium.europa.eu), to which address an e-mail was sent on 26 January 2018 and in respect of which

the defendant indicated on 30 January 2018 to have received this e-mail by responding to it by letter and via a 'no-reply' e-mail address;

4. the legal entity incorporated under European law the **EUROPEAN EXTERNAL ACTION SERVICE**, with its official seat at Rond Point Schuman 9A, 1046, in the EEAS Building in Brussels, Belgium, not having a known address within the Netherlands. on whom this summons is served by means of:
  - a. a copy of this writ, as well as an English translation of this writ, in accordance with Article 56(3) of the Dutch Code of Civil Procedure and Article 14 of EC Regulation number 1393/2007 of the Council of the European Union of 13 November 2007, sent by courier today, to the address of the EUROPEAN EXTERNAL ACTION SERVICE, accompanied by the standard form mentioned in Article 8 of the Service Regulation, included in Schedule II to the Service Regulation, with notification that the EUROPEAN EXTERNAL ACTION SERVICE may refuse to accept this document if it is not written in a language, or is not accompanied by a translation, as referred to in Article 8(1) of the Service Regulation and that the refused documents are to be returned within the period mentioned in that article,
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- c. furthermore, by transmission of a copy hereof and a translation in the English language to the e-mail addresses [silvio.gonzato@eeas.europa.eu](mailto:silvio.gonzato@eeas.europa.eu) and [annick.dekoster@eeas.europa.eu](mailto:annick.dekoster@eeas.europa.eu), from which the defendant corresponded with the claimant's counsel on in any case 7 and 8 February 2018, as well as the e-mail address [stratcom-east@eeas.europa.nl](mailto:stratcom-east@eeas.europa.nl);

**TO:**

Appear on fourteen February two thousand and eighteen, at 1:30 PM, in person or represented by a lawyer, at the hearing of the preliminary relief judge of the Amsterdam District Court, which hearing will be held there at the Court House at Parnassusweg 220.

**WITH THE EXPRESS NOTICE THAT:**

- a. if all the prescribed time periods and formalities have been observed and the defendant should fail to appear in person or be represented by lawyer before this Court, the Court will declare that defendant to be in default of appearance and allow the claim set forth below, unless the Court deems this claim unlawful or unfounded;
- b. if at least one of the defendants appears at the hearing either in person or represented by a lawyer, one judgment will be rendered among all parties, which will be considered a judgment rendered in a defended action;
- c. upon appearance in the proceedings each of the defendants will be charged a court registry fee, to be paid within four weeks to be counted as of the time of appearance;
- d. the amount of the court fees is stated in the most recent annex to the Court Fees in Civil Cases Act, which can be found, inter alia, on the following website:  
[www.kbvg.nl/griffierechtentabel](http://www.kbvg.nl/griffierechtentabel)
- d. a person of limited means will be charged a court fee for indigent persons pursuant to the law, if at the time the court fee is charged the following has been submitted:
  - 1<sup>st</sup>: a copy of the decision to grant legal aid, as referred to in Article 29 of the Legal Aid Act, or, if this is not possible as a result of circumstances not reasonably attributable to the defendant, a copy of the request referred to in Article 24(2) of the Legal Aid Act; or
  - 2<sup>nd</sup>: a declaration of the board of the Legal Aid Council, as referred to in Article 7(3)(e) of the Legal Aid Act, indicating that the defendant's income is not in excess of the income referred to in the order in council under Article 35(2) of that act;

## IN ORDER TO:

hear the following arguments and claims set forth on behalf of the claimants:

### 1. Introduction

- 1.1. Plaintiffs have been branded unjustly by defendants as ‘disinforming outlets’ and accused of spreading fake news, amongst others on the website EUvsDisinfo.eu.
- 1.2. By spreading these inaccurate and serious accusations defendants have acted unlawfully vis-a-vis plaintiffs.

### 2. The parties

- 2.1. GS Media is a Dutch media company that operates the website GeenStijl, among others.
- 2.2. De Persgroep is a publishing house that publishes the De Gelderlander newspaper, among others.
- 2.3. TPO operates the news website tpo.nl.
- 2.4. Mr Chris Aalberts is a journalist and makes regular contributions to tpo.nl as a freelancer.
- 2.5. The defendant under 1, the European Union, is the umbrella body in which European states are united. The European Union has legal personality pursuant to Article 47 of the Treaty on the European Union (the Maastricht Treaty or ‘TEU’).
- 2.6. The defendants under 2 and 3, the European Commission and the European Council, are institutions of the European Union that have been established pursuant to Article 13 TEU.
- 2.7. The defendant under 4, the European External Action Service or ‘**EEAS**’, is the diplomatic service of the European Union, set up by the European Council and the European Commission.<sup>1</sup>
- 2.8. As exhibits **39 and 40** the relevant extracts from the Chamber of Commerce and, as may be the case, other identifying documentation relating to plaintiffs and defendants are submitted.

### 3. Facts

- 3.1. In 2015, the EU developed a strategy concerning communications regarding Russia and Ukraine, which was laid down in the ‘Action Plan on Strategic Communication’ of 22 June 2015.<sup>2</sup> Part of this strategy was to set up a team within EEAS under the name ‘East

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<sup>1</sup> by Council Decision 2010/427/EU.

<sup>2</sup> See: <http://archive.eap-csf.eu/assets/files/Action%20Plan.pdf>.

StratCom Task Force’, which carries out “*the EU’s objectives concerning strategic communications in its Eastern neighbourhood*”.<sup>3</sup>

- 3.2. As part of this strategy, the EU has started to publish the ‘Disinformation Review’, a regular newsletter containing cases of alleged “*disinformation*” established by the EU. These cases are selected by the EU if they meet the following cumulative criteria (**Exhibit 1**):

*“If the message is a) false, which is determined by the facts and b) originating and/or in line with usual pro-Kremlin disinformation messaging, it is included in [the Disinformation Review]”*

- 3.3. This newsletter is sent via email, Facebook and Twitter, and has been published on the EEAS website (eeas.europa.eu). The newsletter notes that the cases published in the Disinformation Review are “*examples of pro-Kremlin disinformation*” (**Exhibit 2**). The ad for the Review on the EEAS website contains this statement as well (**Exhibit 3**):



- 3.4. The Disinformation Review has been published since late 2015, early 2016.
- 3.5. In September 2017, the EU announced that it would also be publishing cases of ‘disinformation’ – or ‘fake news’ as the EU calls it – (**Exhibit 4**) on a website titled ‘EU vs Disinformation’. This website can be found at <euvsdisinfo.eu> and contains, among other things, a database including “*more than 3,300 cases of disinformation messages*” (**Exhibit 5**).
- 3.6. The EU creates a separate page on EU v Disinfo for each article or broadcast that involves ‘disinformation’ according to the EU. It then summarizes the alleged disinformation under the heading “*Summary of Disinformation*” and provides an explanation as to why the article or broadcast in question involves disinformation under the heading “*Disproof*”. The page includes a link to the original publication and the medium that published the ‘disinformation’ is referred to as the “*Disinforming outlet*”.
- 3.7. According to the EU's information, the EU obtains its information on cases of ‘disinformation’ from a network of experts. Those participating in this network have been selected by the EU. The EU says that it checks the information it receives from this network thoroughly before publishing an accusation of ‘disinformation’ (**Exhibit 6**).

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<sup>3</sup> See: “Questions & Answers about the EastCom Stratforce”, [https://eeas.europa.eu/headquarters/headquarters-Homepage/2116/questions-and-answers-about-east-stratcom-task-force\\_en](https://eeas.europa.eu/headquarters/headquarters-Homepage/2116/questions-and-answers-about-east-stratcom-task-force_en).



- 3.8. The EU spreads its message that ‘disinformation’ is spread in aggressive terms. For example, the official tagline of ‘EU vs Disinfo’ is: “*Don’t be deceived*”.
- 3.9. And on Twitter, among others, the EU presents itself as the “EU Myth busters”:



- 3.10. These ‘myth busters’ of the EU introduce themselves as follows: “*We and our partners have identified and debunked over 3,500 disinformation cases*” (**Exhibit 7**). The EU has said the following on Twitter regarding the database at <euvsdisinfo.eu> (**Exhibit 8**):

*“THE ONLY SEARCHABLE DATABASE OF FAKE NEWS”*

- 3.11. In a YouTube video promoting the ‘database of fake news’, the EU asserts that the database contains “*MORE THAN 3000 CASES OF PRO-KREMLIN DISINFORMATION*”.

- 3.12. The EU regularly publishes strongly-worded propaganda regarding ‘fake news’ on the ‘EU v Disinfo’ Facebook page. For example, a video appeared on Facebook<sup>4</sup> in October 2017, which was watched over 100,000 times. In this video, the EU stated the following, among other things, (**Exhibit 9**):

*“Pro-Kremlin disinformation can look like just another news story.*

*It comes from Russia Today and Sputnik and from many sites that hide their links to Russia.*

*They look like FACTS to you but they’re NOT*

*FACT: You are being manipulated”*

- 3.13. What follows, is a number of examples of ‘fake news’ (according to the EU), with a big red stamp reading “FAKE”:



<sup>4</sup>[https://www.facebook.com/EUvsDisinfo/?hc\\_ref=ARRxiJXfrb\\_ck850WyNc2wogjg1eRMjF3s6BfwEeiB2fYJssyIGaR-kaqgf60AYolsg&fref=nf](https://www.facebook.com/EUvsDisinfo/?hc_ref=ARRxiJXfrb_ck850WyNc2wogjg1eRMjF3s6BfwEeiB2fYJssyIGaR-kaqgf60AYolsg&fref=nf)

- 3.14. The EU explicitly attacks those that have spread this information and states: *“Their message is: Be afraid! (...) Why? “to challenge democratic values and divide Europe” - European Parliament”*.
- 3.15. Among the ‘disinforming outlets’ that have allegedly spread disinformation are the claimants. An article in the De Gelderlander newspaper and articles on GeenStijl and TPO have been labelled ‘fake news’. These accusations are completely unjustified, as will be explained below.

#### 4. Accusations against GS Media

- 4.1. In January 2018, GS Media found that the EU had designated an article on GeenStijl as “disinformation” and GeenStijl as “Disinforming outlet” in both the Disinformation Review and the database on EU vs Disinfo (**Exhibit 10**):

The screenshot shows a report titled "Summary of Disinformation" with a black background and orange text. The main text reads: "Ukraine is a highly corrupted, fascistic country, which is the centre of international drug and human labour traffic." Below this is a "Disproof" section with an orange background and white text: "Repeats older disinformation about regime in Ukraine. No supporting facts given." To the right, there is a sidebar with various fields: "Reported Issue 5" (with a crown icon), "Date: 27.11.2015", "Language: Dutch", "Country of Origin: Ukraine", "Reported by: Promote Ukraine NGO" (circled in pink), "Keywords: Corruption, Nazi/Fascist", and "Disinforming outlet: geenstijl.nl" (circled in pink). At the bottom left, there are social media share icons for Facebook and Twitter, and at the bottom right, there are navigation arrows.

- 4.2. According to the “*Summary of Disinformation*”, the GeenStijl article contains the message: *“Ukraine is a highly corrupted, fascistic country, which is the centre of international drug and human labour traffic”*.
- 4.3. The EU provides the following ‘disproof’ in this regard: *“Repeats older disinformation about regime in Ukraine. No supporting facts given.”*
- 4.4. The GeenStijl article in question is dated 27 November 2015 and is titled *“Live! GeenPeil lecture by Poroshenko to Uni Leiden”* (**Exhibit 11**).
- 4.5. The accusation of ‘disinformation’ is completely unjustified.
- 4.6. The assertion that the article states that Ukraine is a “*fascistic country*” is wrong. That is not what it says. The article is about the Ukrainian president Poroshenko's visit to the Netherlands. Poroshenko was to give a lecture at Leiden University, in which context GeenStijl expressed criticism about the fact that the lecture was for invitees only, and that

there was only limited opportunity to ask critical questions. GeenStijl then suggests that the Ukrainian president could be asked the following question:

*“What about the latent fascist political undercurrent of the country?”*

- 4.7. The words ‘political undercurrent’ contain a link to an article by the Ukrainian sociologist Volodymyr Ischenko in The Guardian, in which he expresses his concerns about the latent political undercurrent in Ukraine (**Exhibit 12**).
- 4.8. The GeenStijl article furthermore states:

*“It is commendable that Poroshenko gives the Dutch people the opportunity to ask him why his country has one of the most corrupt governments on this continent.”*
- 4.9. This is therefore put in the form of a question, and is moreover substantiated with a link to a report from Transparency International, a respected NGO conducting global investigations into corruption, according to which Ukraine is one of the most corrupt countries in the world (**Exhibit 13**).
- 4.10. Another question GeenStijl suggests is: *“Why his country, as ‘one of the largest suppliers of slave labour in Europe’, is an epicentre of human trafficking.”* This statement is substantiated with a link to a report from the UN body the International Organization for Migration (**Exhibit 14**). Finally GeenStijl proposes that he should be asked *“Why his country is one of the main transit ports for international drug trafficking”*, referring to a report from the US government showing this.
- 4.11. Therefore the article on GeenStijl contains well-founded and serious criticism of the Ukraine. The statements are supported by the findings of renowned institutes and scientists. The assertion of the EU *“No supporting facts given”* in that light is somewhat peculiar. It is a legitimate, critical contribution to the public debate about Ukraine. And GeenStijl does not present the accusations as facts, but in the form of suggestions for questions that should be asked to Poroshenko (but which will not be asked, because there is no room for critical questions).
- 4.12. However, the EU, prompted by an institution with the telling name *“Promote Ukraine NGO”*, labelled this contribution as *“disinformation”*, and labelled GeenStijl as *“disinforming outlet”*. Apparently, the only reason for that is that the substance of the article is not consistent with the EU policy aimed at strengthening the ties with Ukraine.
- 4.13. Since January 2018, various media have been paying attention to the fact that (in the words of EenVandaag, a news and current affairs programme on Dutch national TV) the EU accuses GS Media, among others, of bringing *“fake news or disinformation”*.
- 4.14. EenVandaag subsequently contacted the EU, but was informed that the members of the EU vs Disinfo team are not allowed to talk to the press (**Exhibit 15**). EenVandaag concludes: *“The EU stands by its work in the fight against fake news”*.

- 4.15. On 26 January 2018 GS Media demands that the EU (the EEAS, the EU, the Commission and the European Council), among other things, remove and keep removed the incorrect accusations and to issue a rectification (**Exhibit 16**).
- 4.16. GS Media then received an e-mail from the ‘Public Information Service’ of the European Council containing the following statement: “*the website ‘EU vs Disinfo’ [is] operated by the European External Action Service, and not the Council of the EU*” (**Exhibit 17**). Reference is made to an e-mail address (info@euvsdisinfo.eu) which does not work.
- 4.17. GS Media did observe that after it had sent its demand letter, the notification of its article on the website EU vs Disinfo had suddenly disappeared. The Dutch media also noticed this. On 30 January 2018 the NOS (Netherlands Broadcasting Corporation) asked the EU for an explanation (**Exhibit 18**): “*A spokesperson of the task force tells the NOS that it should never have been posted. The error was allegedly due to a translation error.*”
- 4.18. On 2 February 2018 GS Media received a substantive response. EU agency EEAS writes that it no longer construes media outlets which in its opinion distribute ‘disinformation’ as “*disinforming outlet[s]*” but instead as “*outlet[s] where the disinformation appeared*”. That change does not appear to be very relevant, given that GeenStijl is still wrongly accused of distributing *fake news*. Moreover, the EU refuses to rectify the term “*disinforming outlet*” (**Exhibit 19**).
- 4.19. The EU agency furthermore restates the argument that it allegedly concerned a translation error.
- “*With regard to the article in question, we accept that the original wording used on the geenstijl.com website – “fascist political undercurrent” – was incorrectly transcribed into the EUvsDisinfo database as “fascistic country”. For this reason, we can confirm that the item in question has been permanently removed from the EUvsDisinfo database.*”
- 4.20. That seems to be an ad hoc argument.
- 4.21. First of all, it is not very plausible that the mere difference in nuance regarding ‘fascism’ should be sufficient to allow the scales to be tipped from ‘good information’ to ‘disinformation’. And if this were the case, it shows how carelessly the EU expresses its accusations, and a rectification in any event would be appropriate.
- 4.22. Prior to the sending of the demand letter, on 23 January 2018, a spokesperson of the EU informed Villamedia that “*there are people ‘with Dutch language skills’ in the team.*”. Moreover “*the team can use the support of translation services of the European Union and Dutch colleagues in the EU institutions*” (**Exhibit 20**). What is more, a notification “*is checked several times*”. Consequently, the reliance on a ‘translation error’ is not convincing.
- 4.23. Also on 23 January 2018, a press release is issued (in immaculate English) by ‘Promote Ukraine’, the organisation that reported the ‘disinformation’ to the EU against GS Media (**Exhibit 21**). In the press release, Promote Ukraine defended its report. It quotes a section

of the article on GeenStijl in Dutch, which is then refuted substantively in English. This shows that the authors of the press release/the reporting parties have indeed understood the Dutch quote, which means it is not plausible that they made a ‘translation error’ in their original report. The criticism expressed by Promote Ukraine about the GeenStijl article was: *“Quite an emotional article with no place for an alternative point of view”*. These are the reporting parties by whom the EU allows itself to be convinced to label media reports from the European media as *“disinformation”*.

- 4.24. And by referring exclusively to the alleged erroneous translation of the text about the latent fascist undercurrent, the EEAS leaves the other accusations unchanged, since the alleged ‘disinformation’ was: *“Ukraine is a highly corrupted, fascistic country, which is the centre of international drug and human labour traffic”*. Therefore it upholds the statement that the information about corruption and playing a role in the international drug and human trafficking is allegedly disinformation.
- 4.25. The EU’s reaction strangely enough ends with an accusation vis-à-vis GS Media. GS Media should have used the complaint form. That is an incomprehensible argument. An online complaints procedure does not give the EU a license to express incorrect and serious accusations vis-à-vis European media outlets, let alone that it would remove the obligation to rectify. What is more, many ‘frequent responders’ on GeenStijl have indeed filled out this form, as GeenStijl appealed to its readers to do so in the article wherein GeenStijl addressed the matter (**Exhibit 22**): *“If you wish to object to the unfounded EU slander campaign stated above, then, as you can see below, you can simply do so via this link.”*
- 4.26. The request for rectification is not responded to.
- 4.27. Incidentally, although the accusations were removed from the EUvsDisinfo website, they are still online, on the website of the EEAS. On said website, the edition of the “Disinformation Review” that contains the accusations made against GS Media is still fully available online at this time (**Exhibit 23**):<sup>5</sup>

27.11.2015	NLD	Ukraine is a highly corrupted, fascistic country, which is the centre of international drug and human labour traffic.	<a href="http://bit.ly/1OUMZG">http://bit.ly/1OUMZG</a> (geenstijl.nl)	Repeats older disinformation about regime in Ukraine. No supporting facts given	Promote Ukraine NGO
				Repeating the latest disinformation trend about connections between Islamic state terrorists and	

## 5. Accusations made against De Persgroep / De Gelderlander

- 5.1. De Persgroep observes at the end of January 2018 that the article *“Buk manufacturer rejects conclusions MH17”* (**Exhibit 24**) which appeared on 28 September 2016 in De Gelderlander newspaper, was labelled by the EU as ‘disinformation’, and De Gelderlander as a ‘disinforming outlet’.

<sup>5</sup> This can be consulted at the following address, referring to the website of the EEAS:  
[http://eeas.europa.eu/archives/docs/euvdisinfo/docs/disinformation\\_review\\_01-12-15\\_en.pdf](http://eeas.europa.eu/archives/docs/euvdisinfo/docs/disinformation_review_01-12-15_en.pdf).

- 5.2. These accusations are expressed both in the “Disinformation Review” on the website of the EEAS (**Exhibit 25**) and in the EU vs Disinfo database (**Exhibit 26**).

**The whole technical report concerning the MH17 case was based on false facts, rigged by Ukraine to accuse Russia. The BUK-rocket was launched from the territory controlled by Kyiv.**

**Summary of Disinformation**

The whole technical report concerning the MH17 case was based on false facts, rigged by Ukraine to accuse Russia. The BUK-rocket was launched from the territory controlled by Kyiv.

[VIEW ORIGINAL PUBLICATION / MEDIA](#)

**Disproof**

The outlet uncritically reports the disinformation pushed by pro-Kremlin outlets.

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Reported in: Issue 42

Date: 28.09.2016

Language: Dutch

Country of Origin: Russia, Ukraine

Reported by: Promote Ukraine

Keywords: MH17

Outlet where the disinformation appeared: De Gelderlander

- 5.3. The EU provides the following “Summary of Disinformation”:

*“The whole technical report concerning the MH17 case was based on false facts, rigged by Ukraine to accuse Russia. The BUK-rocket was launched from the territory controlled by Kyiv”*

- 5.4. As “Disproof” the EU states:

*“The outlet uncritically reports the disinformation pushed by pro-Kremlin outlets.”*

- 5.5. Furthermore, the following accusation is stated on the page (later adjusted to ‘outlet where the disinformation appeared’):

**Disinforming outlet:  
De Gelderlander**

- 5.6. In an interview with a spokesperson of the EU, a question is asked about the mention of the article in De Gelderlander. The interviewer remarks that this notice of ‘disinformation’, too, was made by the lobbying group “Promote Ukraine NGO” and asks whether this is taken into account in the assessment of the article (Exhibit 20):

*“The spokesperson says that the focus is always on the original article and the information it contains. Neither the media outlet in question nor the party filing the complaint will be considered in the ultimate*

assessment, says the spokesperson: “If the article contains false information and repeats pro-Kremlin disinformation, it will be published on the site as a case of disinformation.”

The ‘myth busting network’ that underlies EU vs Disinfo consists of over 400 experts, journalists, government members, NGOs and think tanks, the spokesperson states in defence. A notification is checked several times. Via the aforementioned procedure, errors can be corrected, according to the spokesperson for EU vs Disinfo.”

5.7. The EU therefore adds extra weight to its accusations by emphasising that they are checked carefully and several times before being posted online.

5.8. However, this is not a case of disinformation either.

5.9. The article is a brief report of a press conference held by Almaz-Antey, the manufacturer of the Buk missile, in reaction to the publication of an investigation report into the attack on flight MH17. De Gelderlander does not make the words of the manufacturer its own. The article time and again emphasises that it concerns the opinion of the manufacturer:

J “Buk manufacturer rejects...”

J “The Russian manufacturer of the Buk missile rejects ...”

J “says missile manufacturer Almaz-Antey”

J “The arms manufacturer states”

J “Almaz-Antey believes”

5.10. Dutch newspapers Algemeen Dagblad and Eindhovens Dagblad in any event have exactly the same article posted online (**Exhibit 27**), and many other media have published similar articles (including Dutch newspapers Reformatorisch Dagblad and De Telegraaf , **Exhibit 28**). However, strangely enough those media outlets have not been accused of being ‘disinforming outlets’.

5.11. Other elements, too, illustrate the careless and almost offhand manner in which the EU chooses and distributes its accusations. Even the words of the missile manufacturer are misquoted:

(a) According to the EU the article contains the following: “*The whole technical report concerning the MH17 case was based on false facts*”. That is not what it says. The manufacturer has stated: “*The findings of the international team of investigators led by the Netherlands are not supported by technical evidence*”. The words ‘false facts’ are stated neither in English nor in Dutch in the article.

(b) The EU Taskforce states that the article contains the following statement: “*false facts, rigged by Ukraine to accuse Russia*”. This is also incorrect. Nowhere is it stated that facts have allegedly been ‘rigged up’ by Ukraine for the purpose of accusing Russia.

- 5.12. It is outright disconcerting that the EU Taskforce accuses De Gelderlander of distributing fake news because “*the outlet [De Gelderlander] provides uncritical coverage about the disinformation that is pushed by pro-Kremlin outlets*”.
- 5.13. Therefore, the objective of the EU Taskforce is not whether the information is incorrect (i.e. no disinformation). No, De Gelderlander is labelled a ‘*disinforming outlet*’ simply because it reported on a press conference of a party affiliated with the Kremlin. And that it did so without criticising the specific position in the same article. Therefore, the EU labels media outlets that reports on third party opinions that are displeasing to the EU ‘*disinforming outlets*’. As if media should exclusively reflect the position approved by the EU.
- 5.14. Quite apart from the fact that this is tantamount to contempt of press freedom, De Gelderlander is thus falsely accused of spreading fake news.
- 5.15. On 2 February 2018, De Persgroep demands that the EU permanently remove and rectify the accusations (**Exhibit 29**).
- 5.16. The EEAS responds on 7 February 2018. De Gelderlander is clearly guilty of spreading false, pro-Kremlin reporting, according to the EU. Therefore, it stands by its accusations: “*We have reviewed the case in question and remain convinced that the article in question falls clearly into this category [of messages which have been identified as providing a partial, distorted or false view or interpretation and spreading pro-Kremlin messaging]*” (**Exhibit 30**).
- 5.17. This means the accusations are not removed and are fully (and wrongly) online, both in the Disinformation Review and on the website EU vs Disinfo.
- 5.18. The EU Taskforce did adjust its substantiation as follows:
- “*Recurring pro-Kremlin disinformation. Almaz-Antey released its disinforming report on 28 September 2016 following the presentation of the report by the Joint Investigative Team on the same day. The JIT report however concluded that flight MH17 was shot down on 17 July 2014 by a missile of the 9M38 series, launched by a BUK-TELAR, from farmland in the vicinity of Pervomaiskiy (or: Pervomaiskyi). At that time, the area was controlled by pro-Russian fighters. The BUK-TELAR was brought in from the territory of the Russian Federation and subsequently, after having shot down flight MH-17, was taken back to the Russian Federation [link]*
- In September 2016, two years after MH17 was shot down, it was clear that Almaz Antey was delivering misleading and alternate versions of the cause of the tragedy which are not supported by evidence [links]”*
- 5.19. Therefore, the accusations have been expanded. De Gelderlander is now also accused of spreading “*recurring pro-Kremlin disinformation*” and “*misleading and alternate*” versions of the MH17 tragedy. These are accusations that are given extra charge by the considerable weight and sensitivity regarding the reporting on this tragedy that has affected so many Dutch citizens.
- 5.20. The EU refuses to rectify.



- 5.21. The accusations are also still online in the “Disinformation Review” (Exhibit 25), but with yet another explanation (i.e. the third variant):

Date	Language / Targeted Audience	Summary of the Disinformation	Link to the Disinformation	Disinforming outlet (s)	Disproof	Reported by
28.09.2016	NLD	The whole technical report concerning the MH17 case was based on false facts, rigged by Ukraine to accuse Russia. The BUK-rocket was launched from the territory controlled by Kyiv.	<a href="#">LINK TO DISINFORMATION</a>	De Gelderlander	Dutch translation of the KIA disinformation mentioned above.	Promote Ukraine

## 6. Accusations against TPO

- 6.1. On 18 January 2018 TPO observes that an article dated 19 November 2015 on its website with the title *#Bruslog: Thierry Baudet is the Netherlands' foremost expert on Ukraine* (**Exhibit 31**) on the EU vs Disinfo website is labelled as ‘disinformation’ and TPO as a ‘disinforming outlet’ (**Exhibit 32**).
- 6.2. The article is part of a journalistic series of no less than 215 instalments on TPO about the EU, by freelance author Chris Aalberts.
- 6.3. For the article, Aalberts made a report on a meeting of the Dutch political party Forum voor Democratie ("FvD"), which took place in the run-up to the referendum on the Association Agreement with Ukraine. Invited to the lecture is journalist Stefan Huijboom, who speaks about the situation in Ukraine. Huijboom is a Ukraine correspondent who lives and works in Kiev. The article is a (critical) report of the lecture, in which Aalberts focuses on the fact that party leader Baudet tries to score points off Huijboom.
- 6.4. For example, Aalberts writes: *“Nobody here needs a journalist who talks about Ukraine: everyone already knows the score, including host Thierry Baudet, who interrupts Huijboom every two minutes to show that he also knows a lot about Ukraine. As a consequence, we are making no progress whatsoever this evening in our analysis of what is going on in the Ukraine and the EU’s role therein. ... Huijboom is quite negative about Ukraine, but not negative enough: The purpose of Thierry’s interruptions is to paint an even more negative picture of Ukraine and the Ukrainian government. ... This pattern is most poignant if Huijboom talks about cluster bombs. Thierry interrupts to explain that the Ukrainian government uses cluster bombs. Huijboom repeats three times that both sides use cluster bombs, but each time it is stressed again that the government is most in the wrong.”*
- 6.5. Each time he quotes statements from Huijboom or Baudet, it is clear that it concerns opinions of third parties. Therefore Aalberts does not make these opinions his own.
- 6.6. However, according to the EU website this, too, clearly concerns fake news, and the TPO is labelled a ‘disinforming outlet’ (later adjusted to ‘outlet where the disinformation appeared’) and is accused of dispersing ‘disinformation’.

**Disinforming outlet:**  
politiek.tpo.nl



- 6.7. The words 'view original publication / media' contain a link to the article on TPO. The following is stated as 'Summary of Disinformation': "*Ukraine is an oligarch state with no independent media. "The resistance army which killed thousands Polish Jews during the Second World War is still respected"*".
- 6.8. That summary of the TPO article is incorrect. The article does not state that Ukraine is an oligarch state with no independent media, nor does it state that the resistance army which killed thousands of Polish Jews during WWII is still respected. What it does state is that the following "*becomes clear from Huijboom's account: impartial media do not exist in the country, oligarchs have enormous power, a resistance army which killed hundreds of thousands of Polish Jews during World War II is still being worshipped...*". Therefore, the article reflects Huijboom's opinion.
- 6.9. To emphasise that it concerns Huijboom's opinion, the following sentence is as follows: "*Huijboom is quite negative about Ukraine, but not negative enough: The purpose of Thierry's interruptions is to paint an even more negative picture of Ukraine and the Ukrainian government.*" It also becomes quite clear from the rest of the article that it concerns Huijboom's opinion.
- 6.10. Therefore, the accusation of the EU Taskforce utterly fails to do justice to the facts, being that TPO only reported on the statements made by participants in a political meeting. This element is not recognised in the information in EU vs Disinfo, while that distinction is of considerable importance. This is because media outlets are free - and it is one of their most important tasks - to reflect different opinions expressed in the political debate and to inform the public about that. Even - or perhaps particularly - if those opinions are unfavourable to the EU.
- 6.11. Second: why should the media not be allowed to report on these opinions (even if the opinions were their own, which is not the case here)? That is not explained by this EU website.
- 6.12. Under the heading 'Disproof' it is explained why the article is said to contain disinformation. I.e.: "*The article seems to be aimed only at worsening the image of Ukraine before the Dutch referendum about the Association Agreement*".

## Disproof

The article seems to be aimed only at worsening the image of Ukraine before the Dutch referendum about the Association Agreement.

- 6.13. In short, media which (in the opinion of the EU Taskforce) “*are only trying to damage the Ukraine’s reputation*” are guilty of spreading fake news. Apparently, the media are not supposed to spread any reports that could damage the Ukraine’s reputation, especially when the interests of the EU (the treaty) are at stake.
- 6.14. This explanation clarifies - as also became clear from the case involving De Gelderlander - that it is not the EU’s objective to track and refute fake news or disinformation. Rather, it is about acting against reporting, truthful or not, that could impair the reputation of Ukraine – and thus the interest of the EU which wants to prevent the Ukraine from sliding towards the Russian sphere of influence. What is more, the EU had an interest (as is literally stated under ‘disproof’) in the Dutch citizens voting in favour of the Association Agreement between Ukraine and the EU. And therefore the news had to be: all is well in Ukraine.
- 6.15. To achieve that, the EU Taskforce is attacking its ‘own’ European media outlets, and it wrongly labels them ‘fake news outlets’. In addition, this ‘disinformation’ also turns out to have been put forward by Ukrainian lobbying organisation ‘Promote Ukraine NGO’ (Exhibit 32).

**Reported by:**  
Promote Ukraine NGO

**Keywords:**  
Nazi/Fascist

**Disinforming outlet:**  
politiek.tpo.nl

- 6.16. TPO observed in February 2018 that the mention of its article on the website EU vs Disinfo had been removed, without TPO having been notified thereof. However, to this day, the accusations made against TPO are still stated in full on the website of the EEAS, i.e. in the “Disinformation Review” (Exhibit 33):<sup>6</sup>

19.11.2015	NED	attacks were staged. Ukraine is an oligarch state with no independent media. “The resistance army which killed hundreds thousands Polish Jews during the Second World War is still respected.”	<a href="http://bit.ly/1Mjbd4e">http://bit.ly/1Mjbd4e</a> (Politiek.tpo.nl)	The article seems to be aimed only at worsening the image of Ukraine before the Dutch referendum about the Association Agreement.	Promote Ukraine NGO
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<sup>6</sup> This can be consulted at the following address, referring to the website of the EEAS:  
[http://eeas.europa.eu/archives/docs/euvdisinfo/docs/disinformation\\_review\\_01-12-15\\_en.pdf](http://eeas.europa.eu/archives/docs/euvdisinfo/docs/disinformation_review_01-12-15_en.pdf).

- 6.17. On 6 February 2018, TPO demanded, by e-mail and registered mail, that the EU (the EU, the Council, the Commission and EEAS) permanently delete the accusations no later than 7 February, and rectify these (**Exhibit 34**).
- 6.18. On 8 February 2018, TPO received a reply from the EEAS (**Exhibit 35**). The response contained much of the same language as the responses to GS Media and De Persgroep. The EEAS writes the following about the TPO article. *“we accept that the English language contribution provided to us for this entry did not fully reflect the account of the lecture presented in the Dutch language in TPO’s article. For this reason, we can confirm that the item in question has already been permanently removed from the EUvsDisinfo database and therefore cannot be further modified or corrected”*.
- 6.19. This reply is not convincing.
- 6.20. Firstly because there is little wrong with the translation. There are errors in the summary, but these are not translation errors. The EU furthermore does not clarify which translation errors there supposedly are. But more importantly, these alleged translation errors are not relevant. Even if the errors had not been made, the accusations targeting TPO still stand up.
- 6.21. The crux of the matter – something the EU does not discuss – is that the representation on the EU vs Disinfo website is misleading, because it does not say that it concerns a report on what others said at a political gathering. That the English representation of the article did not correctly convey the report of the FvD lecture is not what it is about. What matters is that the accusations completely disregard the fact that it concerned a report on what others said.
- 6.22. The EU Task Force does not take back any of its motivation for labeling the TPO as a “disinforming outlet”. Because, according to the EU, TPO is a fake news outlet simply because *“the article seems to be aimed only at worsening the image of Ukraine before the Dutch referendum about the Association Agreement”*. And the alleged translation errors do not change this at all. As the article indeed is not good for Ukraine's image. It is galling that the EU does not recognise that, in a free society where freedom of expression applies, the media is free to disseminate news and opinions. Even if that reporting is not to the EU's liking. The EU should safeguard the freedom of the press, and not attack it on the grounds of propaganda.
- 6.23. In response to TPO's request for rectification, the EEAS also reported that a “correction” was supposedly no longer possible, as the accusations had already been removed from the EU vs Disinfo website. That is an incomprehensible standpoint. Rectification is always possible.
- 6.24. And, as stated, the accusations are still online, on the EEAS website.

## 7. Violation of Article 8 ECHR/Article 7 Charter/rash accusations

- 7.1. The claimants base their claims on three grounds. The defendants are acting unlawfully by damaging the claimants' reputation, by violating the presumption of innocence and the right to a fair trial, and by unacceptably limiting their freedom of expression and freedom of the press. The first ground is discussed below.
- 7.2. Based on established case law, the claimants have the right to remain safeguarded against rash accusations that damage its honour, good name and reputation.<sup>7</sup> The defendants also violate the claimants' right to reputation as protected by Article 8 of the ECHR and Article 7 of the Charter. On the other hand, there is the right of freedom of expression of the EU that can be restricted if the requirements of Article 10(2) of the ECHR are met.
- 7.3. Below, the claimants will discuss the circumstances that play a role for each of them when considering these interests, which are fundamentally equal.
- 7.4. The following circumstances are in any case relevant in light of the accusations against the claimants, which circumstances the Supreme Court also mentions as decisive circumstances in the Municipal Councillor ruling:
- (a) this concerns very serious accusations: disseminating '*disinformation*', *fake news* and "*pro-Kremlin*" propaganda, and being a '*disinforming outlet*';
  - (b) The facts do not support these accusations, as explained above. These are all truthful reports, so the accusations of disinformation are incorrect. For some of the accusations, the EU also acknowledged that these are indeed not supported by facts.
  - (c) The accusations were made by a very authoritative source, namely by the EU, and were presented by the EU as an established fact. In response to inquiries, the media reconfirmed that the accusations are only published after extensive and careful research.
  - (d) The consequences for the claimants are far-reaching. The EU has worldwide labelled them, being just a handful of Dutch media, as outlets of "disinformation", "fake news" and "pro-Kremlin propaganda". And because the EU has never retracted its incorrect accusations, the accusations are still out there. Part of the public will think there is an element of truth in it. Indeed, the EU would not just spread such serious accusations without good reason?
  - (e) The EU did not hear both sides, which is in fact required when publishing such serious accusations.
- 7.5. As regards GS Media, it is of particular importance that it is an important and critical voice in the debate on the rapprochement of Ukraine with the EU. It made the news worldwide when it organized the "GeenPeil" referendum on the Association Agreement between

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<sup>7</sup> Supreme Court 24 June 1983, *NJ* 1984, 801 (Municipal Councillor X).

Ukraine and the EU. The fact that the EU now publicly labels GS Media as an outlet of fake news and pro-Kremlin propaganda damages GS Media's position as an independent, critical voice in this debate.

- 7.6. With regard to the articles in De Gelderlander and on TPO (with Aalberts as author) it holds that the messenger function of the press is at stake. These articles were just the conduit for other people's expressions. That also applies, albeit to a lesser extent, to the GeenStijl article. In said article, GeenStijl gives suggestions for critical questions that could be asked to Poroshenko. These were always based on authoritative sources, to which reference is made in the article. Therefore, these accusations, too, go back to third parties (the UN, Transparency International, the Guardian, the US government).
- 7.7. When the press passes on statements of third parties, the newspaper in principle is not liable for those statements.<sup>8</sup> The ECtHR ruled for instance that the sentencing of journalist Jersild for recording and broadcasting an interview with a group of racist youngsters who made racist statements was in violation of Article 10 of the ECHR.<sup>9</sup> This could be different if for example, the medium would assume these statements. It is established, however, that the media is also allowed to report on objectionable statements. In the *Thoma* ruling, the ECtHR confirms the importance of the messenger function:
- “punishment of a journalist for assisting in the dissemination of statements made by another person ... would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so.”*<sup>10</sup>
- 7.8. The ECtHR adds that media representing possibly objectionable statements by third parties do not have to distance themselves from those statements in the same article:
- “A general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press's role of providing information on current events, opinions and ideas”*
- 7.9. The EU's accusation that the Gelderlander “*uncritically reports the disinformation pushed by pro-Kremlin outlets*” therefore shows a lack of knowledge of the freedom of the press, as laid down in the ECHR and the Charter, and is contrary to established case law of the ECtHR. De Gelderlander is free to publish bare facts of a press conference. And the public has the right to be informed of differing standpoints. The EU's assertion in its reply to the demand letter that “*the information provided does not address the differences in findings between the JIT report (published the same day) and the manufacturers' views*” (Exhibit 30) is also in direct violation of Article 10 ECHR. Journalists cannot be required to distance themselves from the messages of third parties.

<sup>8</sup> See, for example, ECtHR 29 March 2001, NJ 2002/159, (*Thoma/Luxembourg*), and ECtHR 17 December 2004, case no. 49017/99 (*Pedersen and Baadsgaard/Denmark*).

<sup>9</sup> ECtHR 23 September 1994, NJ 1995/387 (*Jersild/Denmark*).

<sup>10</sup> ECtHR 29 March 2001, NJ 2002/159 (*Thoma/Luxembourg*).

- 7.10. The EU is ignoring this crucial interest of the media's messenger function. It places the medium outlet and the message on one line and 'names and shames' media outlets, where - according to the Union - disinformation appears that very clearly originates from others.
- 7.11. It is also important in regards to De Gelderlander that the EU Task Force alleges that De Gelderlander could be accused of the following:
- “The whole technical report concerning the MH17 case was based on false facts, rigged by Ukraine to accuse Russia. The BUK-rocket was launched from the territory controlled by Kyiv.”*
- 7.12. In fact, the EU is accusing De Gelderlander of believing the theory that MH-17 was not shot down by Russians, but rather by Ukraine. And that Ukraine ran a scam just to irritate Russia. This is an accusation that is way off the mark. De Gelderlander simply reported on a press conference, which is quite a common activity for the press. In the Netherlands, everybody knows direct or indirect victims of the MH17 disaster. This accusation is thus extra damaging to De Persgroep.
- 7.13. As regards TPO, the “evidence” of disinformation consisted of the following:
- “The article seems to be aimed only at worsening the image of Ukraine before the Dutch referendum about the Association Agreement”*
- 7.14. As previously stated, the EU Task Force does not even say that the information is incorrect. Although the message is incorrect, that does not keep it from accusing TPO of disinformation. And this “disproof” text even contains an extra accusation. TPO and Aalberts supposedly only wanted to damage the Ukraine’s reputation and wanted to thereby influence the results of the Ukraine referendum. They were wrongly presented as some kind of Kremlin agents.
- 7.15. Various members of Members of Parliament also expressed their concern about the fact that this seems to be a case of a digital pillory for media that do not disseminate the pre-approved EU standpoint (**Exhibit 36**):
- (a) *“Those articles were never read carefully and were all contributed by a pro-Ukrainian club of lobbyists. This, no less, from a country where there is no freedom of the press at all. And that is then unthinkingly put on such a list, to pillory our media”* (Ronald van Raak, SP);
- (b) *“The accusation that De Gelderlander spreads fake news is absurd. I would almost go so far as to call the accusation “fake news”. In this way, the EU commission is making a mockery of the fight against disinformation. As far as I’m concerned, De Gelderlander must be taken off that list immediately, and we should focus now on the real threats to our democracy”* (Attje Kuiken, PvdA).
- 7.16. Given these circumstances, the interests of the claimants in protecting their reputation and remaining safeguarded from rash and incorrect accusations weigh more heavily than the

EU's right to its freedom of expression. In accordance with Article 10(2) ECHR, in a democratic society, it is necessary to award the claims in these circumstances.

## 8. Violation of Article 6 ECHR and Article 48 Charter

- 8.1. The acts of the EU also constitute a violation of the presumption of innocence and the right to a fair trial, as set out in Articles 6 ECHR and 48 of the Charter. After all, without any due process, the claimants were labelled by the supranational government as a “*disinforming outlet*” which spreads fake news, manipulates citizens, has secret ties to the Kremlin and aims at “*challenging democratic values and dividing Europe*”, as can be read on the EUvsDisinfo website.

## 9. Violation of Article 10 ECHR/Article 11 Charter

- 9.1. The EU is required to respect the rights of the claimants that follow from Article 10 ECHR and Article 11 of the Charter (freedom of expression and information). Article 10 ECHR protects the “*freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*”
- 9.2. Article 11 of the Charter provides:  
“*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*”
- 9.3. The EU’s wrongful qualification of articles as “disinformation”/”fake news”, and labelling media as “disseminators of disinformation”/”disinforming outlet”/”pro-Kremlin” is patently the definition of *interference of public authority* in the claimants’ freedom of opinion, for the following reasons.
- 9.4. Freedom of expression encompasses the following aspects (among others things):
- (a) the freedom to be safeguarded against discouragement by a public authority to spread certain information or ideas, as this would have a “*chilling effect*” on the one making the statement or on the public in general;
  - (b) the freedom to impart information and ideas (set out in Article 10(1) ECHR) and the freedom of the public to receive information and ideas (Article 10(1) ECHR);
  - (c) the obligation for the authorities to ensure the pluralism and editorial freedom of media.<sup>11</sup> This also follows directly from the text of Article 11(2) of the Charter: “*The freedom and pluralism of the media shall be respected.*”

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<sup>11</sup> See for example ECtHR 24 November 19923, joined cases no. 13914/88 – 17207/90 (*Informationsverein Lentia/Austria*).



- 9.5. The conduct of the EU forms an impermissible interference in each of these aspects of the claimants' freedom of expression:

Re a: chilling effect

- 9.6. The EU's wrongful public labelling of media as "disinforming outlet[s]" and labelling truthful information as "disinformation" creates a chilling effect. The intention of the EU is to warn the reader. Watch out, don't trust these media outlets. And implicitly: stay away from them. The accusations have extra impact in this case because they are made by the EU, an organisation whose credibility will not soon be doubted by its citizens. The accusations can be disastrous to the media outlets concerned.
- 9.7. It can also lead to media outlets being less likely to publish accusations against Ukraine, to avoid the "fake news" label of the EU. That also seems to be precisely the EU's desired effect; less critical views about Ukraine. And, true or false, the "fake news" label has caused permanent damage to the credibility and confidence readers have in the claimants. Certainly as long as the EU refuses to rectify this.
- 9.8. The ECHR ruled previously in a case against Liechtenstein that distributing reprimands based on the expression of an opinion (unfavourable to the State) was in violation of Article 10 ECHR as this led to "*a chilling effect on the exercise by the applicant of his freedom of expression, as it was likely to discourage him from making statements of that kind in the future*"<sup>12</sup>.

Re b: interference in the freedom to impart and receive information and ideas

- 9.9. The EU wrongly publicly accuses the claimants of spreading disinformation and of being a 'disinforming outlet' (later changed to an 'outlet in which disinformation appears', without having ever rectified the earlier term). The media outlet and the article were included in a database as an example of "pro-Kremlin disinformation". It was explained above that all the claimants' articles concern truthful information, that only seems to have been labelled as disinformation because it is critical towards Ukraine. To all appearances, the EU is trying to suppress the distribution of information and ideas that are not in line with the official EU position on Ukraine. Criticism of Ukraine is tantamount to being in league with the enemy.
- 9.10. Viewed in light of the chilling effect mentioned above, this is a clear interference in the claimants' freedom to disseminate information and ideas. The report in De Gelderlander was even labelled fake news (an accusation that is still found online) simply because a report of a press conference of a party with ties to the Kremlin was run *uncritically*. This is a clear example of limiting how information is distributed.
- 9.11. The EU is also thereby restricting access by the public to certain information and ideas. The conduct of the EU is also directly impacting the freedom of the public to receive

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<sup>12</sup> ECtHR 28 October 1999, no. 28396/95 (*Wille/Liechtenstein*).

information and ideas. The public is entitled to hear what the BUK manufacturer has to say, what was discussed during the FvD conference and what criticism international organisations have on the situation in Ukraine (as contained in the questions on the GeenStijl website).

Re c: plurality and editorial freedom

- 9.12. The acts of the EU also damage the pluralism and editorial freedom of the media, which directly affects the claimants. To illustrate this: The substantiation for labelling the TPO report as disinformation, is that “*the article seems to be aimed only at worsening the image of Ukraine before the Dutch referendum about the Association Agreement*”. Evidently, reporting that can damage Ukraine's image is, by definition, *fake news*. In its explanation, the EU does not even make the effort to even argue that the information was incorrect. The complaint that the article in De Gelderlander is *fake news* because a press conference was reported “*uncritically*” illustrates that the EU especially wants to control information flows. If Ukraine's reputation is damaged, or if the standpoint of a pro-Kremlin party is presented (uncritically), that is supposedly a case of disinformation. In its evaluation, it does not even seem relevant whether the message under attack is true or not.
- 9.13. The article on GeenStijl seems to have been labelled *fake news* in particular because it talks about corruption and the role of fascism in Ukraine. That is also information that cannot be spread. The only explanation the EU gives is “*Repeats older disinformation about regime in Ukraine.*” In the eyes of the EU, Ukraine is a model country and the media are asked to also toe that line. Otherwise, a reprimand will follow: ‘*fake news*’.
- 9.14. This is a clear case of interference in the pluralism and editorial freedom of the claimants, and more specifically in the claimants’ freedom to present opinions and facts from different camps, and to not limit its reporting to EU-approved news.
- 9.15. In fact, the EU hands out reprimands to the media that do spread information it does not like, because that can be harmful to a (potential) ally. The ECtHR ruled previously that handing out reprimands to Moldavian journalists for making critical statements about the Soviet past of Moldavia or for suggesting cultural or linguistic ties between Moldavia and Romania was an impermissible restriction of Article 10 ECHR.<sup>13</sup>
- 9.16. In a free society, it also up to the court to evaluate statements, and not for the government, let alone for the supranational court.

Interference in violation of Art. 10 ECHR and Art. 11 of the Charter

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<sup>13</sup> ECtHR 17 September 2009, no. 13936/02 (*Manole/Moldova*).

- 9.17. This is thus a case of interference in the claimants' freedom of expression. Such interference is only lawful if this meets the requirements set out in Article 11(1) Charter and Article 10(2) ECHR, including whether the interference (i) is provided by law, and (ii) is necessary in a democratic society.
- 9.18. The interference is not provided by law, as required by Article 10(2) ECHR. It is entirely not provided by law when the EU officially deems a news article as "fake news" or "pro-Kremlin disinformation". What is more, no objective and effective legal procedure was provided against the random interference of the EU in the claimants' rights.
- 9.19. The interference is also not necessary in a democratic society. The contrary is true, as a matter of fact: the EU should refrain from interference and should protect the freedom of the press in a democratic society.
- 9.20. It is also important that the claimants' publications make a contribution to a political debate about Ukraine, that is extra loaded in the Netherlands because of the referendum on the Association Treaty. It is established case law of the ECtHR that "*there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate of questions of public interest*".<sup>14</sup>
- 9.21. With its statements, the EU is trying to be the arbiter of the truth. This is unacceptable in a free and democratic society, as different international authoritative sources have emphasised throughout the years. In the 1980s, the Inter-American Court of Human Rights studied the question of whether it was permissible to set up a licensing system for journalists in Costa Rica, arguing that this would be a way to guarantee "objective and truthful" information for society. The Court ruled as follows:
- "A system that controls the right of expression in the name of a supposed guarantee of the correctness and truthfulness of the information that society receives can be the source of great abuse and, ultimately, violates the right to information that this same society has."*<sup>15</sup>
- 9.22. In 2005, the ECHR ruled, appropriately, in a case against Ukraine:
- "Article 10 of the Convention as such does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful. To suggest otherwise would deprive persons of the right to express their views and opinions about statements made in the mass media and would thus place an unreasonable restriction on the freedom of expression set forth in Article 10 of the Convention."*<sup>16</sup>
- 9.23. So even if the information could be incorrect ("disinformation"), Article 10 ECHR does not stand in the way of its dissemination. What is more, even the suggestion that such

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<sup>14</sup> ECHR 8 July 1986, series A no. 103, p. 26 (*Lingens/Austria*) and ECtHR 23 April 1992, series A no. 236, p. 23 (*Castells/Spain*).

<sup>15</sup> See OAS, "*Mandatory membership in a professional association for the practice of journalism*", to be consulted at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=154&lID=1>

<sup>16</sup> ECtHR 06 September 2005, no. 65518/01 (*Salov/Ukraine*).

information cannot be disseminated (for example, if the supranational government publicly labels it as *fake news*), would constitute an unreasonable restriction of the freedom of expression. So even if the position that the BUK manufacturer takes in the article in De Gelderlander is incorrect, the media is of course free to report what the opinion of the BUK manufacturer is. The EU also seems to be deriving citizens of the right to form an opinion on the basis of the information that they receive.

9.24. The preceding (about ECtHR case law and the ECHR) also applies under the regime of the Charter. Article 52(3) of the Charter stipulates that the norms in the Charter should offer at least the same level of protection as the norms in the ECHR.

9.25. The concern about the regulation of the objective truth by states or international organisations are shared by the UN, OAS and ACHPR (African Commission on Human and Peoples' Rights). In March 2017, they issued a joint statement that says (bold added by counsel):

*“Stressing that the human right to impart information and ideas is not limited to “correct” statements, that the right also protects information and ideas that may shock, offend and disturb, and that **prohibitions on disinformation may violate international human rights standards**, while, at the same time, this does not justify the dissemination of knowingly or recklessly false statements by official or State actors”*

9.26. In this case, there may not be a direct prohibition of statements. However, the conduct of the EU qualifies per se as “interference” by a public authority in the freedom of expression as defined in Article 10 ECHR. Claimants would also point out that the joint statement explicitly stipulated that it is impermissible for “*official or State actors knowingly or recklessly [disseminating] false statements*” And that is exactly what is happening here. The EU is knowingly spreading false, serious accusations against the claimants.

## 10. Competence of the Dutch court

10.1. The Dutch court has jurisdiction to hear this dispute.

10.2. Regulation 1215/2012 of the European Parliament and of the Council (“Brussels Ibis”) applies, as this concerns a civil/commercial matter (Article 1 Brussels Ibis). The ground for this case is a wrongful act on the part of the defendants. By virtue of Article 7(2) Brussels Ibis, the court of the place where the damaging fact occurred has jurisdiction.

10.3. The contested statements appeared online and were also disseminated in the Netherlands, and focused on the Netherlands. The damaging fact thus occurred primarily in the Netherlands. Since that is also the country where the claimants have their centre of main interest, the Dutch court has jurisdiction.<sup>17</sup> This authority also follows from Article 6(1)(e) Dutch Code of Civil Procedure. Because the claimants are located partly in Amsterdam and

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<sup>17</sup> See ECJ 25 October 2011, joined cases C-509/09 and C-161/10 (*eDate / Martínez*).

the statements are/were also available in Amsterdam, the claimants have recourse to the preliminary relief judge of the Amsterdam Court.

- 10.4. For the sake of completeness, if it should prove that the Dutch court does not have jurisdiction on principal, the Dutch preliminary relief court is authorised to take a provision by virtue of Article 35 Brussels Ibis, or Article 13 DCC, whether or not in conjunction with Article 274 of the Treaty on the Functioning of the European Union (“**TFEU**”).

## **11. Urgent interest**

- 11.1. The contested accusations against the claimants are still online on the website of the EEAS and partly (as regards De Gelderlander) on the EUvsDisinfo website. Therefore, this is a case of continuing damage.
- 11.2. The EU also refuses to rectify this, causing ongoing damage to the claimants’ reputation, and causing citizens to doubt the truthfulness of the claimants’ reporting. The accusations remain out there until this is rectified.
- 11.3. For these reasons, the claimants have an urgent interest in their claims.

## **12. Defence and evidence**

- 12.1. To the extent relevant to this, attention has already been paid to the defendants’ defence.
- 12.2. The exhibits stated in the summons will be submitted in a timely manner.

## **13. Defendants**

- 13.1. The claims are filed against defendants 1-4 for the following reasons.
- 13.2. The European Council (defendant sub 3) is one of the institutions of the European Union. In its conclusions of 19 and 20 March 2015, the Council initiated the policy of the EU on disinformation, and Frederica Mogherini, the vice president of the European Commission and high representative of the European Commission for foreign affairs, was charged, in cooperation with EU institutions, including the European Commission (defendant sub 2), with drafting a plan of action regarding disinformation (**Exhibit 37**). The European Council is thus the instigator and commissioner of the fight against “disinformation” by the EU, and is thus also partly responsible for the statements that are the issue here.
- 13.3. This action plan was then drafted by Mogherini (**Exhibit 38**). For this purpose, Mogherini (and thereby the European Commission, defendant sub 2) set up the East StratCom Task Force within the EEAS (that also falls under the authority of the European Commission), also including the EUvsDisinfo website. The European Commission is also liable for the accusations on this website, which are presented here.

- 13.4. The East StratCom Task Force is the unit that staffs the EUvsDisinfo website and posts content there. The Task Force is part of the EEAS. The EEAS also acknowledges that the website falls under its control and has also always given the claimants a substantive response to the demand letters. The contested accusations are also not only on the euvsdisinfo.eu website, but also on the website of the EEAS. That is why the EEAS has also been summoned.
- 13.5. The East Stratcom Task Force is an implementation of the strategic communications goals of the European Union. The website EU vs Disinfo was set up by the EU as part of its powers with regard to the common foreign policy as set out in Article 24 TFEU. The EU is the legal entity that is ultimate responsible for the policy of the EEAS, the Council and the Commission. The EU is also consistently and prominently named as the party making the accusations. It is 'EU vs Disinfo'. On Twitter the project is presented as the "EU Myth Busters":



- 13.6. The logo prominently displays the EU as the messenger:



- 13.7. It is the EU that is acting against fake news. The website also falls under the EEAS, and that is the diplomatic service of the EU, as can be read from the "about us" section of the EEAS website: "*The EEAS is the European Union's diplomatic service. It helps the EU's foreign affairs chief – the High Representative for Foreign Affairs and Security Policy – carry out the Union's Common Foreign and Security Policy.*"<sup>18</sup>
- 13.8. The EU (which has legal personality under Article 47 TEU) is therefore also summoned.
- 13.9. Defendants are thus all responsible for the wrongful acts that are described in the summons.

## 14. Claims

- 14.1. Claimants have a right to rectification, permanent deletion, and a prohibition against further publications for the following reasons, among others:
- (a) The seriousness of the accusations;
  - (b) The authority of the party making the statements (the EU);

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<sup>18</sup> [https://eeas.europa.eu/headquarters/headquarters-homepage/82/about-the-european-external-action-service-eeas\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/82/about-the-european-external-action-service-eeas_en).

- (c) The fact that the accusations against all claimants is still online; The EU has maintained the accusations against De Gelderlander, and, as stated, these are still online at both <eeas.europe.eu> and <euvsdisinfo.eu>; the GeenStijl and TPO articles have been removed from <euvsdisinfo.eu> but are still online at <eeas.europe.eu>
  - (d) Defendants have not retracted their accusations; in the case of De Gelderlander, the EU even confirmed and expanded the accusations; as regards GeenStijl and TPO, the EU only invoked translation errors without retracting the accusations;
- 14.2. In respect of De Gelderlander, the interest is evident, since the EU maintains its accusations in full, and has even expanded them.
- 14.3. As for the article on GeenStijl, the EU refers in its reply to the demand letter only to the alleged translation error in the text on the latent fascist undercurrents. That means that the EU Task Force remains behind its assertion that the other accusations that are addressed in the GeenStijl article - about corruption and the role that Ukraine plays in the international drugs trade and human trafficking - are still regarded as “disinformation” by the EU. After all: the accusation by the EU that this was fake news also pertained to those elements. The alleged ‘disinformation’ was: *“Ukraine is a highly corrupted, fascist country, which is the centre of international drug and human labour traffic”*.
- 14.4. Because the EU upholds these accusations, the risk is increased that the accusations will be spread again, so that GS Media is entitled to a prohibition.
- 14.5. That also applies to TPO and Aalberts. After all, the EU Task Force writes in response to the demand letter from TPO: *“we accept that the English language contribution provided to us for this entry did not fully reflect the account of the lecture presented in the Dutch language in TPO’s article.”*
- 14.6. Separate from the fact that this is incorrect (there was little wrong with the translation), it is completely ignoring the essential matter that TPO is free to report on exchanges at a political gathering. The EU is still failing to acknowledge this. The EU Task Force is also not taking anything back from its reason for labelling the TPO as a “disinforming outlet”. I.e. that *“the article seems to be aimed only at worsening the image of Ukraine before the Dutch referendum about the Association Agreement”*. Because even if the translation were to be not completely correct, it is still so that the article is not good for the reputation of Ukraine. And so for that reason it still does not pass muster according to the EU.
- 14.7. So the risk that the accusations will be disseminated again is very real for TPO and Aalberts, as well.
- 14.8. Regarding the articles on TPO and GeenStijl, the promise was made that the accusations be permanently removed from the EUvsDisinfo database. But not that any dissemination of them will be halted. The mere fact that they are no longer in a database is not any guarantee that they will not be put out again in a different manner. That is even separate

from the point that the accusations are still online on the EEAS website. Also the fact that the EU in fact is standing behind the reasoning that was used to qualify all combated messages to qualify them as *fake news*, gives the claimants the right to a prohibition sanctioned with a penalty payment.

## **FOR WHICH REASONS:**

It may please the Preliminary Relief Court, through a judgment provisionally enforceable insofar as possible,

I. To order each of the Defendants to cease and desist from any publication or dissemination of accusations against claimants as set out in the body of the summons, including in any case the accusation of the dissemination of disinformation or fake news in relation to the articles named in the summons that appeared on GeenStijl.nl, TPO.nl and De Gelderlander, and to remove and keep permanently removed these accusations from all websites under its purview, including but not limited to the websites <eeas.europe.eu> and <euvsdisinfo.eu>;

II. To order the defendants, within two days after the rendering of this ruling to be awarded during a consecutive period of four weeks, to place a clearly legible rectification on the homepage of the website <eeas.europe.eu> and on the homepage of the website <euvsdisinfo.eu?, both within a frame that covers at least 10% of the readable portion of the starting page (the portion that is visible when opening the website, without scrolling), which frame will include exclusively the following rectification text:

“We falsely accused Dutch website geenstijl.nl (part of GS Media) of publishing disinformation on Ukraine in an article of 27 November 2015, entitled “*Live! GeenPeil lecture by Poroshenko to Uni Leiden*”. Our accusation had no factual basis and was the result of a mistake. The GeenStijl article did not contain any disinformation or fake news. The publication of this correction was ordered by the court of Amsterdam, The Netherlands, by verdict of [enter date of ruling].”

The EU / European Commission / European Council / EU East Stratcom Taskforce.”

III. To order the defendants, within two days after the rendering of this ruling to be awarded during a consecutive period of four weeks, to place a clearly legible rectification on the homepage of the website <eeas.europe.eu> and on the homepage of the website <euvsdisinfo.eu?, both within a frame that covers at least 10% of the readable portion of the starting page (the portion that is visible when opening the website, without scrolling), which frame will include exclusively the following rectification text:



“We falsely accused Dutch newspaper De Gelderlander (a Persgroep publication) of publishing disinformation on Ukraine in an article of 28 September 2016, entitled “BUK manufacturer rejects conclusions MH17”. Our accusation had no factual basis and was false. The article in De Gelderlander did not contain any disinformation or fake news. The publication of this correction was ordered by the court of Amsterdam, The Netherlands, by verdict of [insert date of judgment].

The EU / European Commission / European Council / EU East Stratcom Taskforce.”

- IV. To order the defendants, within two days after the rendering of this ruling to be awarded during a consecutive period of four weeks, to place a clearly legible rectification on the homepage of the website <eeas.europe.eu> and on the homepage of the website <euvsdisinfo.eu>, both within a frame that covers at least 10% of the readable portion of the starting page (the portion that is visible when opening the website, without scrolling), which frame will include exclusively the following rectification text:

“We falsely accused Dutch website The Post Online (tpo.nl) of publishing disinformation on Ukraine in an article of 19 November 2015, entitled “#Bruslog: Thierry Baudet is the most important expert on Ukraine in the Netherlands”. Our accusation had no factual basis and was false. The article on The Post Online did not contain any disinformation or fake news. The publication of this correction was ordered by the court of Amsterdam, The Netherlands, by verdict of [insert date of judgment].

The EU / European Commission / European Council / EU East Stratcom Taskforce.”

- V. To order the defendants to also publish the rectification texts under II through IV on the first page of the next edition of the “Disinformation Review”, and to disseminate this as a separate press release, without further commentary, addressed to all the recipients of the “Disinformation Review” and to the regular recipients of press releases of the EEAS and the EAST StratCom Task Force and to do so within one week after the rendering of this judgement.
- VI. To order defendants jointly and severally to pay a penalty of €20,000 (twenty thousand euros) for each (partial) violation/non-compliance with the demanded prohibitions/orders stated above under I through V, and for each day that the violation/non-compliance persists.
- VII. To order defendants jointly and severally to pay the costs of these proceedings, incurred on the part of the claimants, including subsequent costs, all costs to be increased by the statutory interest starting from 14 days after the date of the rendering of the judgment in this case until the day of full payment.

The costs incurred by me, bailiff, are: