UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KARIN LEFFER, et al.,

Plaintiffs,

v.

FEDERAL REPUBLIC OF GERMANY, et al.,

Defendants.

Civil Action No. 1:19-cv-03529 (CJN)

MEMORANDUM OPINION

This matter is before the Court on Defendants' Motions to Dismiss, ECF Nos. 4, 9, as well as other ancillary motions. For the reasons stated below, Defendant Belgium's Motion, ECF No. 9, is granted in part, the case is dismissed as to Defendants Belgium, Germany, and Switzerland, and all other pending motions are denied as moot.

BACKGROUND

This action arises from the nearly incomprehensible Complaint of *pro se* Plaintiffs Karin Leffer and Beowulf von Prince. Plaintiffs seem to contend that what is now Gdansk, Poland never lost its status as the Free City of Danzig ("Free City") because the Allied Powers conditioned the Free City's transfer to Poland on the execution of a peace treaty that was never signed. *See generally* Compl., ECF No. 1. In Plaintiffs' view, the Free City should be under the control of the United States unless and until such a peace treaty is executed. *Id.* ¶¶ 130–34.

Beowulf von Prince says he is an official of the Free City and has been falsely charged, arrested, extradited and imprisoned for issuing documents in his capacity as a civilian representative of the Allied Powers on behalf of the Free City. *Id.* ¶¶ 75–125. He claims that The

Kingdom of Belgium unlawfully extradited him to the Federal Republic of Germany after learning of a misleading European arrest warrant, *id.* ¶¶ 86–91; that the Swiss Confederation and the European Union approved of his extradition, as well as the mistreatment of the Free City's nationals, *id.* ¶¶ 75–85, 142; and that Germany unlawfully prosecuted him, *id.* ¶¶ 105, 111–125.

Karin Leffer seems to claim that she has suffered political persecution, *id.* ¶ 2, as a result of her attempts to represent the German People and the Free City, *id.* at 2, 34. It is not clear what connection she has to the extradition of Beowulf von Prince or this case.

On March 2, 2020, the EU moved to dismiss for lack of subject matter jurisdiction under Federal Rule of Procedure 12(b)(1) and for failure to state a claim under Rule 12(b)(6), ECF No. 4. On March 25, 2020, Belgium moved to quash service and dismiss for lack of jurisdiction, ECF No. 9, and Germany moved to quash service too, ECF No. 10. Meanwhile, Plaintiffs moved for default against Switzerland, ECF No. 14, sought an order suspending arrest warrants issued against representatives of the Free City, ECF No. 20, moved to enforce a deed, ECF No. 21, and moved to join additional Plaintiffs, ECF No. 26–27. The Court stayed Plaintiffs' motions pending its determination as to whether it has subject matter jurisdiction or the action should otherwise be dismissed. *See* Min. Order *dated* March 19, 2021.

STANDARD OF REVIEW

Defendants seek dismissal for lack of subject matter jurisdiction (under 12(b)(1)) and for failure to state a claim (under 12(b)(6)). Courts, of course, "have an independent obligation to determine whether subject-matter jurisdiction exists," and if (either *sua sponte* or on a 12(b)(1) motion) "a federal court concludes that it lacks subject-matter jurisdiction, the complaint must be dismissed in its entirety." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006).

"To survive a [12(b)(6)] motion to dismiss," on the other hand, "a complaint must contain sufficient factual matter accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim crosses from conceivable to plausible when it contains factual allegations that, if proved, would 'allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Banneker Ventures, LLC v. Graham*, 798 F.3d 1119, 1129 (D.C. Cir. 2015) (alteration omitted) (quoting *Iqbal*, 556 U.S. at 678).

Pro se complaints are "held to less stringent standards than formal pleadings drafted by lawyers[,]" but the plaintiff still "must plead 'factual matter' that permits the court to infer 'more than the mere possibility of misconduct.'" *Atherton v. D.C. Office of Mayor*, 567 F.3d 672, 681-82 (D.C. Cir. 2009) (quoting *Iqbal*, 556 U.S. 679). In other words, a "*pro se* complaint, like any other, must present a claim upon which relief can be granted by the court." *Crisafi v. Holland*, 655 F.2d 1305, 1308 (D.C. Cir. 1981).[1] The Court turns first, as it must, to subject matter jurisdiction.

"The Foreign Sovereign Immunities Act is the sole basis for obtaining jurisdiction over a foreign state in the courts of the United States. Its terms are absolute: Unless an enumerated exception applies, courts of this country lack jurisdiction over claims against a foreign nation." *Belize Social Dev. Ltd. v. Gov't of Belize*, 794 F.3d 99, 101 (D.C. Cir. 2015) (internal citations omitted).

Plaintiffs ask this Court to assert jurisdiction over their controversy with three foreign nations and the European Union. *See generally*, Compl., ECF No. 1. But Plaintiffs do not allege

[1] In deciding whether to dismiss *pro se* Plaintiffs' Complaint, the Court has considered all of Plaintiffs' factual allegations, whether contained in the Complaint or other filings. *Richardson v. United States*, 193 F.3d 545, 548 (D.C. Cir. 1999).

that their claims fall within any of the statute's exceptions. *Compare id.*, *with* 28 U.S.C. §§ 1605, 1607. Nor could they. This action does not concern any counterclaims in a suit brought by a foreign state (§ 1607), acts of terrorism (§§ 1605A, 1605B), or any of the general exceptions listed in § 1605(a)–(b), (d) (like a suit involving "maritime lien[s]," "preferred mortgage[s]," or U.S.-based "commercial activity," "property," or "tortious" acts by a foreign state). Indeed, the only exception that *might* reach Plaintiffs' allegations—the "tortious" acts exception—cannot apply here because Plaintiffs do not allege that any tort or injury occurred "in the United States." *Id.* § 1605(a)(5).

Specifically, Plaintiffs object to Belgium's decision to extradite Beowulf von Prince to Germany (after learning of his European arrest warrant), Compl. ¶¶ 86–91; Switzerland's tacit approval of von Prince's extradition, Compl. ¶¶ 75–83; and Germany's alleged violation of the terms and conditions of his extradition, Compl. ¶¶ 105, as well as Germany's decision to arrest and prosecute him in the first place, Compl. ¶¶ 111–125. All those actions happened outside of the United States, and all of the alleged injuries occurred outside of the United States, so Plaintiffs cannot avail themselves of the tortious act exception. *Jerez v. Rep. of Cuba*, 964 F. Supp. 2d 52, 56 (D.D.C. 2013) (citations omitted).

Even if Plaintiffs could show that a one of those foreign states (or a representative) committed a tortious act or omission in the United States, their claims would fail because they "arise out of malicious prosecution, abuse of process, . . . misrepresentation, deceit, or interference with contract rights." 28 U.S.C. § 1605(a)(5)(B). In short, to the extent Plaintiffs' Complaint can be read to state any claims for relief (and that is a real stretch), they fall outside the scope of the only jurisdictional hook (tortious acts) that might apply under FSIA. Therefore, the Court dismisses this action entirely as to Belgium, Switzerland, and Germany.

One Defendant remains: the European Union. Whether the EU, like its foreign-state counterparts, falls within FSIA's broad grant of immunity is an open question. At least one Court of Appeals has held that the European Community (the EU's legal predecessor) "is an organ of a foreign state, and thus an agency or instrumentality of a foreign state" shielded by FSIA. *See European Cmty. v. RJR Nabisco, Inc.*, 764 F.3d 129, 144 (2d Cir. 2014) *rev'd on other grounds* 136 S. Ct. 2090 (2016). One district court has even "accept[ed] . . . that the [European] Commission" (the executive arm of the EU) "qualifies as a 'sovereign' under" the "act of state and foreign sovereign compulsion doctrines." *Micula v. Gov't of Romania*, 404 F. Supp. 3d 265, 281 (D.D.C. 2019). That said, no court in this jurisdiction has directly held that the EU meets the statutory definition of "an agency or instrumentality of a foreign state" under FSIA. *See* 28 U.S.C. § 1603(b). And this Court is not yet prepared to be the first.

The EU devotes cursory briefing to it status under 28 U.S.C. § 1603(b). *See* EU's Mot. Dismiss 4–6, ECF No. 4. It does not argue that the EU falls within the "ordinary meaning" of the phrase "agency or instrumentality." *See Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759, 769 (2019). Nor does it contend that the statute's structure, context, or purpose establish that Congress designed § 1603(b) to reach international bodies like the EU. *See id.* at 770–71. Moreover, it fails to engage with the very core-functions test that—in this jurisdiction—separates "foreign states" from their "agenc[ies] or instrumentalit[ies]." *See, e.g.*, *Murphy v. Islamic Rep. of Iran*, 740 F. Supp. 2d 51, 62–63 (D.D.C. 2010) (citing *TMR Energy Ltd. v. State Property Fund of Ukraine*, 411 F.3d 296, 300 (D.C. Cir. 2005)). The Court will thus direct supplemental briefing before deciding whether the EU is shielded from liability under FSIA.

CONCLUSION

For the foregoing reasons, the Court grants in part Defendants' motions to dismiss, ECF No. 9. The case is dismissed as to Defendants Belgium, Germany, and Switzerland for lack of subject matter jurisdiction. The Court will require supplemental briefing before deciding whether it lacks jurisdiction to hear Plaintiffs' claims against the European Union as well. All other motions, including ECF Nos. 4, 10, 14, 20, 21, 26–27, are denied as moot. An Order is entered contemporaneously with this Memorandum Opinion.

DATE: March 26, 2021

CARL J. NICHOLS
United States District Judge