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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)

{SWD(2022) 117 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Manifestly unfounded or abusive court proceedings against public participation (commonly referred to also as *strategic lawsuits against public participation* or ‘SLAPPs’) are a recent but increasingly prevalent phenomenon in the European Union. They are a particularly harmful form of harassment and intimidation used against those involved in protecting the public interest. They are groundless or exaggerated court proceedings typically initiated by powerful individuals, lobby groups, corporations and state organs against parties who express criticism or communicate messages that are uncomfortable to the claimants, on a matter of public interest. Their purpose is to censor, intimidate and silence critics by burdening them with the cost of a legal defence until they abandon their criticism or opposition. Unlike regular proceedings, SLAPPs are not initiated with a view to exercising the right of access to justice and the purpose of winning the legal proceedings, or obtaining redress. Instead, they are initiated to intimidate the defendants and to drain their resources. The ultimate goal is to achieve a chilling effect, silence the defendants and deter them from pursuing their work.

Typical targets of SLAPPs are journalists and human rights defenders. This extends beyond individual persons to media and publishing houses and civil society organisations, such as those involved in environmental activism. Other persons engaged in public participation such as researchers and academics may also be targeted.

A healthy and thriving democracy requires that citizens are able to participate actively in public debate without undue interference by public authorities or other powerful interests. In order to secure meaningful participation, citizens must be able to access reliable information, which enables them to form their own opinions and exercise their own judgement in a public space in which different views can be expressed freely.

Journalists have an essential role in facilitating public debate and in imparting information, opinions and ideas. They need to be able to conduct their activities effectively to ensure that citizens have access to a plurality of views in European democracies. Investigative journalists play a key role in combating organised crime, corruption and extremism. A robust system of safeguards is needed to enable them to fulfil their crucial role as watchdogs on matters of legitimate public interest. Their work carries particularly high risks and they are experiencing a growing number of attacks and harassment. Human rights defenders have a critical role to play in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law. They should be able to participate actively in public life and make their voice heard on policy matters and in decision-making processes without fear of intimidation.

Imbalance of power between the parties with the claimant having a more powerful position than the defendant - for example financially or politically - is often a characteristic of SLAPPs. While it is not always the case, where present such an imbalance of power contributes significantly to the potential of SLAPPs to produce harmful consequences for the targets, with chilling effects for public debate as a result. SLAPPs can have a deterrent effect also on other potential targets, who may decide not to assert their right to investigate and report on issues of public interest. This risks leading to self-censorship.

SLAPPs constitute an abuse of court proceedings and put unnecessary burdens on courts. SLAPP-initiating entities and individuals can base their claims on various grounds. The allegations often relate to defamation, but they also relate to breaches of other rules or rights

(e.g. data protection or privacy laws). These are often combined with damages/tort claims or at times injunctions (prohibiting or at least delaying publication).

The prevalence of SLAPPs has been identified as a matter of serious concern in some Member States in the context of the 2020 and 2021 Rule of Law Reports

The Council of Europe's Platform to Promote the Protection of Journalism and Safety of Journalists¹ also reports an increasing number of alerts of serious threats to the safety of journalists and media freedom in Europe, including multiple cases of judicial intimidation. The 2021 annual Report of the partner associations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists underlines the notable increase of SLAPP-related alerts reported in 2020 over the previous year, both in numbers of alerts and jurisdictions of Council of Europe member states concerned². More broadly, information collected on the European Media Pluralism Monitor³ also shows a deterioration in journalists' working conditions. In 2021, the Media Freedom Rapid Response (MFRR) documented 439 alerts (with 778 persons or entities related to media being attacked) in 24 EU Member States in 12 months, including SLAPPs.⁴

While more data is available on threats of SLAPPs against journalists and human rights defenders, other actors engaged in public participation, such as trade union activists and academics, are facing similar problems. This was signalled in a number of civil society contributions received in the open public consultation.

Many SLAPPs occur in domestic context and do not have cross-border implications. However, SLAPPs often have a cross-border nature and where cross-border implications exist, they add an extra layer of complexity and costs, with even more adverse consequences for defendants. The fact that online media content is accessible across jurisdictions may open the way for forum shopping and hamper effective access to justice and judicial cooperation. Defendants may face multiple court proceedings at the same time and in different jurisdictions. The phenomenon of forum shopping (or libel tourism) is a factor amplifying the problem and some jurisdictions are perceived as more claimant-friendly. The effect is even stronger when SLAPPs are launched outside the European Union.

Objective of the proposal

¹ Since 2015, the Platform of the Council of Europe has facilitated the compilation and dissemination of information on serious concerns about media freedom and safety of journalists in Council of Europe member states. Contributing Partner organisations – invited international NGOs and associations of journalists – issue alerts on media freedom violations and publish annual reports on the situation of media freedom and safety of journalists in Europe. The Council of Europe member states are expected to act and address the issues and inform the Platform on the actions taken in response to the alerts. The low response rate of Council of Europe member states, which include EU Member States, shows a need for further action. <https://www.coe.int/en/web/media-freedom>.

² In 2021, 282 alerts were published on the [Platform to promote the protection of journalism and safety of journalists \(coe.int\)](https://www.coe.int/en/web/media-freedom), amongst these, several concerned cases of judicial intimidation, i.e. opportunistic, arbitrary or vexatious use of legislation, including defamation, anti-terrorism, national security, hooliganism or anti-extremism laws. The 2021 Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists noted an increase in 2020 over the previous year, both in numbers of alerts and jurisdictions of Council of Europe member states concerned - [1680a2440e \(coe.int\)](https://www.coe.int/en/web/media-freedom).

³ <https://cmpf.eui.eu/media-pluralism-monitor>

⁴ <https://www.ecpmf.eu/wp-content/uploads/2022/02/MFRR-Monitoring-Report.pdf>. A separate factsheet provides data concerning the 27 EU Member States. https://www.mfrr.eu/wp-content/uploads/2022/02/2022_02_17_MFRR_FACT_SHEET_MAPPING_MEDIA_FREEDOM_European_Union_Member_States_Year_2021.pdf.

This proposal is one of the actions under the European Democracy Action Plan that aim to strengthen media pluralism and media freedom in the European Union. The initiative encompasses also human rights defenders, who play a key role in our democracies and who are also increasingly vulnerable to such abusive forms of harassment.

The proposal aims to protect targets of SLAPPs and prevent the phenomenon from further expanding in the EU. Currently, none of the Member States has specific safeguards against such proceedings and only a few are currently considering the introduction of specific safeguards. There are also no EU-wide rules that address SLAPPs. By developing a common EU understanding on what constitutes a SLAPP and by introducing procedural safeguards, the proposal aims to provide courts with effective means to deal with SLAPPs and targets with the means to defend themselves.

The proposed procedural safeguards apply in cases with cross-border implications. As underlined above, a cross-border dimension of SLAPP cases adds to the complexity and challenges faced by defendants. Protecting EU citizens and civil society from SLAPPs initiated in third countries is another goal of the proposal.

Commission Recommendation protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)

This proposal for a Directive and the Commission recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)⁵, adopted at the same time, are complementary and fully consistent.

The Recommendation invites Member States to review their national situation to ensure that their applicable legal frameworks provide for the necessary safeguards to address SLAPPs in full respect of fundamental rights, including the right to freedom of expression, the right to access to justice and the right to the protection of personal data and democratic values. Member States are also encouraged to include in their national laws similar safeguards for domestic cases as those included in Union instruments that seek to address manifestly unfounded or abusive cases for civil matters with cross-border implications. Member States are recommended, *inter alia*, to abolish prison sentences for defamation cases, and favour the use of administrative or civil law rather than that of the criminal law to deal with such cases, provided that the relevant provisions have a less punitive effect and that the administrative rules exclude any form of detention.

The Recommendation also covers aspects related to the training of legal professionals and potential targets to improve their knowledge and skills to effectively deal with SLAPPs, awareness raising in particular aimed at enabling journalists and human rights defenders to recognize when they are facing a SLAPP, support to targets of SLAPPs (e.g. financial or legal assistance) and a more systematic monitoring and data collection.

- **Consistency with other Union policies**

European Democracy Action Plan

⁵ C(2022)2428, 27.4.2022

On 3 December 2020, the Commission issued a European Democracy Action Plan,⁶ which announced a set of measures to strengthen media freedom and media pluralism, including the SLAPP initiative and a recommendation on the safety of journalists referred to below. That Action Plan is the umbrella-initiative aimed to empower citizens and build more resilient democracies across the EU.

Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union

As highlighted in the European Democracy Action Plan, SLAPPs are often used in combination with threats to the physical safety of journalists. On 16 September 2021, the Commission adopted a Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union.⁷

That Recommendation aims to ensure safer working conditions for all media professionals, free from fear and intimidation, whether online or offline. It lays down actions for Member States to improve the safety of journalists. It also calls for the creation of independent national support services, including helplines, legal advice, psychological support and shelters for journalists and media professionals facing threats. It also calls for an increased protection of journalists during demonstrations, greater online safety and particular support to female journalists.

Strategy to strengthen the application of the Charter of Fundamental Rights of the European Union (“Charter”)

This proposal complements and is fully in line with the Strategy to strengthen the application of the Charter of Fundamental Rights of the EU⁸, adopted on 2 December 2020. This Strategy recognises that civil society organisations and human rights defenders are vital for a healthy democracy and a society where people can enjoy their fundamental rights. Therefore, it sets out actions to, *inter alia*, support and protect civil society organisations and human rights defenders. In particular, the Strategy recognises that those actors are facing challenges in some Member States, which include smear campaigns, physical and verbal attacks, intimidation and harassment including via SLAPPs.

In the Strategy, the Commission invited Member States to promote a supportive and safe environment to civil society organisations and human rights defenders in their country, including at local level.

The present proposal creates one more building block to strengthen fundamental rights in the European Union and supports one of the objectives of the Strategy.

Rule of Law Reports

The Commission’s 2020⁹ and 2021¹⁰ Rule of Law Reports provide evidence on the emergence of SLAPPs in the European Union. The reports underline that in a number of Member States,

⁶ COM(2020) 790 final, 3.12.2020

⁷ C(2021)6650 final of 16 September 2021.

⁸ COM(2020) 711 final, 2.12.2020

⁹ COM/2020/580 final - Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and Committee of Regions 2020 Rule of law report – The rule of law situation in the European Union. - <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602583951529&uri=CELEX%3A52020DC0580>

¹⁰ COM/2021/700/final Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and Committee of Regions 2021 Rule of law report –

journalists and human rights defenders increasingly face threats and attacks, both physical and online, in relation to their publications and their work, in various forms including the deployment of SLAPPs.

Whistleblower Protection Directive

This proposal does not affect the protection already provided by Directive on the protection of persons who report breaches of Union law¹¹ and is fully consistent with it. The effective protection of whistleblowers against retaliation is essential for defending the public interest, and also for safeguarding the watchdog role of media in democratic societies, as whistleblowers are often an important source for investigative journalism. Directive 2019/1937 provides robust protection to persons reporting information on breaches of Union law against any form of retaliation, both within and outside the work-related context, including retaliation through proceedings such as related to defamation, breach of confidentiality and personal data protection. In situations falling within the scope of both this proposal and of Directive 2019/1937, the protection offered by both acts should apply.

EU Action Plan on Human Rights and Democracy 2020-2024

The Action Plan¹² contributes to the safety and protection of journalists and media workers around the world, including by working on an enabling environment for freedom of expression and by condemning attacks and other forms of harassment and intimidation both online and offline. It addresses specific threats faced by women journalists, ensures that those harassed, intimidated or threatened receive assistance via the EU human rights defenders protection mechanisms and supports media initiatives. It appeals to state authorities to prevent and condemn such violence and to take effective measures to end impunity.

Protection of journalists and human rights defenders is at the core of the EU's external human rights and democracy action, in line with the Action Plan. This proposal is in synergy with the strong efforts led by the EU around the world in this regard and will provide additional impetus for further targeted support to human rights defenders and journalists facing SLAPPs.

EU Human Rights Guidelines on Freedom of Expression online and offline

The guidelines¹³ specify that the EU will work against arbitrary attacks, indiscriminate abuse of criminal and civil proceedings, defamation campaigns and excessive restrictions on journalists, media actors, NGOs and social media personalities launched with the aim of preventing these associations and individuals from freely exercising their right to freedom of expression.

The Aarhus Convention

The Union and its Member States are Parties to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-

The rule of law situation in the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1634551652872&uri=CELEX%3A52021DC0700>

¹¹ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17-56.

¹² Joint Communication to the European Parliament and the Council EU Action Plan on Human Rights and Democracy 2020-2024, JOIN/2020/5 final.

¹³ <https://www.consilium.europa.eu/media/28348/142549.pdf>

making and Access to Justice in Environmental Matters ('the Aarhus Convention')¹⁴ each with its own as well as shared responsibilities and obligations under that Convention. Article 3(8) of this Convention requires each Party to ensure that persons exercising their rights in conformity with the provisions of the Convention should not be penalized, persecuted or harassed in any way for their involvement. The inclusion of environmental defenders in the scope of this proposal contributes to the implementation of this international obligation undertaken by the Union.

Communication on Combating Environmental Crime

In its Communication adopted on 15 December 2021, the Commission has committed that a proposal for legislation against abusive litigation targeting journalists and rights defenders will include environmental defenders.¹⁵

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this proposal is Article 81(2) of the Treaty on the Functioning of the European Union (TFEU), which is the regular legal basis for judicial cooperation in civil matters having cross-border implications. More specifically, the legal basis is Article 81(2)(f) TFEU, which empowers the European Parliament and the Council to adopt measures aimed at ensuring "*the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules of civil procedure applicable in the Member States*". Since SLAPPs constitute an obstacle to the proper functioning of civil proceedings, the Union is competent to legislate on that basis in civil matters having cross-border implications. SLAPPs are an abuse of civil proceedings because their aim is not access to justice but harassment and silencing of defendants. At the same time, long proceedings create additional burdens to national court systems.

The rules concerning third country judgments in Chapter V are also based on Article 81(2)(f) since they are incidental to the main purpose of this proposal. They ensure the effectiveness of the rules of this proposal against manifestly unfounded or abusive court proceedings on account of public participation by preventing that such cases are brought before the courts of third countries.

• Subsidiarity (for non-exclusive competence)

SLAPPs are emerging in many Member States and becoming an EU-wide problem. At the same time, none of the Member States currently provides for specific safeguards against SLAPPs.¹⁶ While, depending on national law, some existing general safeguards may be used against SLAPPs, such general safeguards substantially vary across Member States and their effectiveness to address SLAPPs is limited. Furthermore, the existing divergences in national procedural laws risk increasing forum shopping and multiple court proceedings being initiated in different EU jurisdictions. Evidence shows that national civil procedural law is not always

¹⁴ Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.5.2005, p. 1).

¹⁵ Communication from the Commission to the European Parliament and the Council on stepping up the fight against environmental crime, COM(2021) 814 final, 15.12.2021.

¹⁶ IE, LT and MT have proposed legislation or are contemplating to propose legislation to address this problem.

well equipped to deal with the additional complications arising out of the cross-border proceedings.¹⁷ The divergences in national laws also make it highly unlikely that the Member States acting individually would successfully tackle the phenomenon or be able to ensure overall coherence of such rules across Member States to ensure an equally high standard of protection across the Union.

To tackle these risks and to avoid burdening national courts with multiple and lengthy abusive court proceedings, it appears necessary to set minimum standards and ensure compatibility of the rules of civil procedure applicable in the Member States against SLAPPs. Action at EU level helps to combat the emergence and growth of SLAPPs throughout the EU in a consistent manner and ensure convergence in Member States' approaches to the phenomenon.¹⁸

EU action would add value also by providing safeguards to tackle SLAPPs from third countries in an effective way. Joint action from the Member States is needed also to fight against SLAPPs from third countries because otherwise claimants may seek to benefit from divergence of systems between Member States and seek the recognition and enforcement of third-country SLAPP judgments where it can be most easily obtained.

The proposal respects the principle of subsidiarity by proposing only targeted safeguards and limiting the legislative action to what is strictly necessary to achieve what Member States cannot achieve by acting alone.

- **Proportionality**

Action at EU-level should be targeted and limited to what is necessary to ensure consistency in approach in the Member States in relation to cross-border situations. The proposal is designed to respect the principle of proportionality. This is the reason for proposing only well-targeted procedural safeguards. These are designed to provide only what is necessary in order to ensure a better functioning of cross-border civil procedures in case of SLAPPs, which form a serious threat to European democracy and rule of law.

Proportionality is also illustrated by the fact that many of the elements aimed to tackle SLAPPs will be provided as non-legislative measures in a recommendation and not by legislative action.

- **Choice of the instrument**

The selected legislative instrument is a directive, which will provide for binding and consistent procedural safeguards in the Member States. This will prevent existing divergences in safeguards between Member States, which risk leading to forum shopping across the borders. At the same time, the choice of a directive will allow the Member States to fit the specific procedural safeguards to their national civil and procedural law, which still vary considerably between Member States.

The directive will be complemented by a non-legislative instrument (a recommendation). This provides an efficient combination of legislative and non-legislative action.

¹⁷ European Commission, Directorate-General for Justice and Consumers, Gascón Inchausti, M., Hess, B., Cuniberti, G., et al., *An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law : strand 1 : mutual trust and free circulation of judgments*, Publications Office, 2017, <https://data.europa.eu/doi/10.2838/38491>, p.31.

¹⁸ Several Member States (IE, LT and MT) are currently assessing the need of protection against SLAPPs.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

In the stakeholder consultations, input and comments were received from a wide range of key stakeholders representing EU and non-EU citizens, national authorities, legal professionals such as judges, academics, research institutions, NGOs and other relevant interest groups.

The consultations involved an exploratory technical focus group discussion in March 2021 with a selected number of participants that included four targets of SLAPPs, who agreed to share their personal experience, provided useful insights on SLAPPs and helped in the preparatory phase.

An open public consultation¹⁹ collected from 4 October 2021 to 10 January 2022 views of citizens, journalists, Member States, NGOs, civil society, judges, legal professionals and other stakeholders on SLAPPs and what action should be taken to tackle them in the EU.

A targeted consultation of national judges from 12 November 2021 to 10 January 2022²⁰ via the European Judicial Network in civil and commercial matters sought more detailed feedback on identification of SLAPPs, potential procedural shortcomings, already existing (albeit non-SLAPP specific) national remedies, awareness of judges on SLAPPs and judges' training needs.

A technical meeting with Member States experts in October 2021 gathered insights on Member States' views (including from Member States' independent bodies and authorities) on whether and what type of EU-level action could be needed against SLAPPs, what judicial remedies (if any and general or specific) and what kind of support is currently available at national level to targets of SLAPPs.

A workshop with selected stakeholders in November 2021 provided a forum for discussion on the dimension of SLAPPs, collecting information, discussing and testing possible solutions.

The Commission's preparatory work took into account the evidence gathered by the European Parliament during the preparation of its own-initiative report on the matter adopted at the end of 2021.

The feedback from the stakeholders, in particular in the open public consultation and in the stakeholder meeting showed strong support for EU-wide action against SLAPPs, both legislative and non-legislative. The EU-wide organisations reported that SLAPPs are on the rise in the EU, including cross-border cases. The opinions expressed in the public consultation also stressed the importance of training and awareness raising on SLAPPs, the benefits of collecting data and need of proper monitoring of SLAPPs.

Feedback from the public consultation and stakeholder meeting also provided important evidence on the phenomenon in the EU, which was taken on board in the Staff Working Document²¹ accompanying this proposal.

Most Member States signalled support for EU action against SLAPPs, flagging the need to protect freedom of expression and information and media freedom, while preserving the balance between protective anti-SLAPP measures and access to justice. Some Member States

¹⁹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13192-EU-action-against-abusive-litigation-SLAPP-targeting-journalists-and-rights-defenders/public-consultation_en

²⁰ https://ec.europa.eu/eusurvey/runner/EJN_SLAPP

²¹ SWD(2022)117, 27.4.2022.

pointed to a lack of evidence of SLAPP cases, in particular with a cross-border dimension, as a phenomenon of concern in their country.

The targeted consultation of national judges revealed that there is no legal definition of a SLAPP or SLAPP-specific system of safeguards in the Member State of respondents although some of the existing national general safeguards can in principle be used in SLAPP-cases.

The European Parliament adopted an own-initiative report on SLAPPs on 11 November 2021²² calling upon the Commission to present a comprehensive package of measures against SLAPPs, including legislation.

The Commission has also commissioned studies in order to develop a better understanding of the phenomenon in the EU and a first mapping of the situation in the Member States. This first mapping provided insights on SLAPPs and their drivers.²³ The second study was a more in-depth comparative study assessing in detail the current state of play in the Member States.²⁴

- **Collection and use of expertise**

To prepare the SLAPP initiative the Commission set up an Expert Group²⁵ in 2021. The group comprised of academics, legal professionals and representatives of media and civil society. The group's mandate was to provide legal expertise on SLAPPs, act as a platform at EU level to exchange best practices and knowledge and, where possible, assist targets of SLAPPs. A specific legislative sub-group within the expert group was created in autumn 2021 to assist the Commission in the preparation of the legislative proposal.

- **Staff Working Document**

This proposal is accompanied by a Staff Working Document²⁶, which presents the rationale, analysis and evidence available to underpin the proposal. There is no Impact Assessment accompanying the proposal, as this proposal will provide targeted procedural safeguards and will not generate significant quantifiable costs. In contrast, it will provide national courts with more adapted means to stop attempts to misuse judicial procedures and avoid the related costs that such misuse can cause to the judicial system. Moreover, as SLAPPs endanger fundamental rights of freedom of expression and freedom of information, it is of crucial importance to take strong and swift action to prevent that this harmful phenomenon, which has emerged relatively recently but is increasingly present, expands further in the EU.

- **Fundamental rights**

The proposal promotes the protection of fundamental rights in the European Union. Journalists, human rights defenders and other target groups benefiting from the proposed procedural safeguards play an important role in European democracies, especially in upholding public debate, fundamental rights, democratic values, social inclusion,

²² European Parliament resolution of 11 November 2021 on strengthening the democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society (2021/2036(INI))

²³ Available at https://ec.europa.eu/info/sites/default/files/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf

²⁴ https://ec.europa.eu/info/files/strategic-lawsuits-against-public-participation-slapp-european-union-comparative-study_en

²⁵ [Expert group](#) against SLAPP.

²⁶ SWD(2022)117, 27.4.2022.

environmental protection and the rule of law. At the same time, procedural law plays a key role in guaranteeing the effectiveness of fundamental rights in accordance with the Charter.

The right to freedom of expression and information as set forth in Article 11 of the Charter includes the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. While it is not an absolute right, any limitations thereto must be provided for by law, respect the essence of such right and be enacted only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others (Article 52(1) of the Charter).

At the same time, the proposal ensures the balance of access to justice as guaranteed in Article 47 of the Charter and personality/privacy rights under Articles 7 and 8 of the Charter with the protection of freedom of expression and information. The procedural safeguards are carefully targeted and leave the court sufficient discretion in individual cases to maintain the delicate balance between speedy dismissal of manifestly unfounded claims and effective access to justice.

4. BUDGETARY IMPLICATIONS

This proposal will not have implications for the budget of the European Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the Directive in the Member States shall be facilitated by the Commission providing transposition assistance to ensure a smooth implementation in the Member States, organising at least one transposition workshop and organising bilateral meetings including on demand by Member States. Member States will also be invited to notify their national transposition measures.

The operation of the Directive shall be reviewed 5 years after its entry into application.

- **Explanatory documents (for directives)**

This proposal does not require specific explanatory documents.

Detailed explanation of the specific provisions of the proposal

The Directive consists of four distinct main parts: common rules on procedural safeguards (Chapter II), early dismissal of manifestly unfounded court proceedings (Chapter III), remedies against abusive court proceedings (Chapter IV) and protection against third-country judgements (Chapter V). The provisions contained in Chapter I and VI are horizontal in scope.

Chapter I General provisions: this chapter contains provisions on the subject matter and scope of the instrument, some definitions and a provision about when a matter is considered to have cross-border implication for the purpose of the Directive.

Article 1 indicates the subject matter, clarifying that the specific safeguards provided by the Directive are meant to address manifestly unfounded or abusive court proceedings in civil matters with cross-border implications brought against both natural and legal persons on

account of their engagement in public participation, in particular journalists and human rights defenders.

Article 2 defines the material scope of the Directive, which applies to matters of a civil or commercial nature with cross-border implications, whatever the nature of the court or tribunal. This includes civil claims brought in criminal proceedings but also interim and precautionary measures, counteractions or other particular type of remedies available under other instruments. As in other civil and commercial EU instruments, revenue, customs, administrative matters or the liability of the State for acts and omissions in the exercise of State authority are excluded from the scope. The notion of *acta iure imperii* includes claims against officials who act on behalf of the State and liability for acts of public authorities, including liability of publicly appointed office-holders. Public authorities should therefore not be considered to be targets of SLAPP.

Article 3 provides the definition of public participation, matter of public interest and abusive court proceedings against public participation.

Public participation is broadly defined meaning any statement or activity expressed or carried out in:

- 1) the exercise of the right to freedom of expression and information, such as the creation, exhibition, advertisement or other promotion of journalistic, political, scientific, academic, artistic, commentary or satirical communications, publications or works, and preparatory, supporting or assisting action directly linked thereto;
- 2) the exercise of the right to freedom of association and peaceful assembly, such as the organisation of or participation to lobbying activities, demonstrations and protests or activities resulting from the exercise of the right to good administration and the right to an effective remedy, such as the filing of complaints, petitions or administrative and judicial claims and participation in public hearings, as well as preparatory, supporting or assisting action directly linked thereto.

In addition, it covers other activities meant to inform or influence public opinion or to further action by the public, including activities by any private or public entity in relation to an issue of public interest, such as the organisation of or participation to research, surveys, campaigns or any other collective actions, and preparatory, supporting or assisting action directly linked thereto. Preparatory actions are, for example, interviews made by an investigative journalist or an academic to prepare a statement, or information collected by an environmental defender. Supporting and assisting actions should be covered because claimants can bring court proceedings also against actors providing necessary supporting or assisting services such as internet connection or printing services with the objective to indirectly restrain the freedom of expression of the actual SLAPP target. Such preparatory, supporting and assisting actions need to have a direct and inherent link to the statement or activity in question.

On the other hand, public participation should normally not cover commercial advertisement and marketing activity (commercial speech).

Matter of public interest is also defined broadly, with reference to any matter which affects the public to such an extent that the public may legitimately take an interest in it, in areas such as, for example, public health, safety, the environment, climate, or enjoyment of fundamental rights.

The definition of **abusive court proceedings against public participation** refers to court proceedings, brought in relation to public participation that are either fully or partially unfounded and have as their main purpose to prevent, restrict or penalize public participation.

A non-exhaustive list indicates the most common indicators of abuse, such as the disproportionate, excessive or unreasonable nature of the claim or part thereof, the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters or intimidation, harassment or threats on the part of the claimant or his or her representatives.

Abusive court proceedings often involve litigation tactics used in bad faith such as delaying proceedings, causing disproportionate costs to the defendant in the proceedings or forum shopping. These tactics, which are used by the claimant for other purposes than gaining access to justice, are often, although not always, combined with various forms of intimidation, harassment or threats before or during proceedings, for the purpose of hindering public participation.

Article 4 specifies when a matter is considered to have cross-border implications.

For the purpose of this Directive, a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seized, which indicates that the matter is assumed to be purely domestic.

However, even where both parties to the proceedings are domiciled in the same Member State as the court seized, the matter shall be considered to have cross-border implications in two other types of situations.

- 1) The first situation is where the specific act of public participation concerning a matter of public interest at stake is relevant to more than one Member State. That includes for instance public participation in events organised by Union institutions, such as appearances in public hearings, or statements or activities on matters that are of specific relevance to more than one Member State, such as cross-border pollution or allegations of money laundering with potential cross-border involvement.
- 2) The second situation where a matter should be considered to have cross-border implications is when the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State.
- 3) These two types of situations take into consideration the specific context of SLAPPs.

Chapter II Common rules on procedural safeguards: This Chapter contains horizontal provisions on the application for procedural safeguards, its content and other procedural features.

Under **Article 5**, an application can be filed for different types of procedural safeguards:

- a) a security in accordance with Article 8;
- b) an early dismissal of manifestly unfounded court proceedings in accordance with Chapter III;
- c) remedies against abusive court proceedings in accordance with Chapter IV.

While the description of the nature of the statement or activity as an act of public participation should be an admissibility requirement, a description of supporting evidence should be considered appropriate, if no evidence has already been provided by the main claimant or is not otherwise available to the court. Member States may provide that the same measures can be taken by the court or tribunal seised of the matter *ex officio* at any stage of the proceedings.

Article 6 deals with subsequent amendments to claim or pleadings by claimants who deliberately withdraw or amend claims or pleadings to avoid awarding costs to the successful

party. This legal strategy may deprive the court of the power to acknowledge the abusive nature of the court proceedings, leaving the defendant with no opportunity to be reimbursed for procedural costs. The provision ensures that any subsequent amendments to the claims or the pleadings made by the claimant, including the discontinuation of proceedings, do not affect the possibility for the court or tribunal seized of the matter to consider the court proceedings as abusive and grant award of costs, compensation of damages or penalties.

Article 7 provides that a court or tribunal seized in the matter may accept that non-governmental organisations safeguarding or promoting the rights of persons engaging in public participation may take part in proceedings, either in support of the defendant or to provide information. Member States should regulate the procedural requirements of intervention, possibly including time limits, in accordance with the procedural rules applicable to the court or tribunal seized of the matter.

Article 8 introduces the power for the court or tribunal to require the claimant to provide a security for procedural costs or for procedural costs and damages, when the court considers that even if the claim is not manifestly unfounded, there are elements indicating an abuse of procedure and the prospects for success in the main proceedings are low.

Chapter III Early dismissal of manifestly unfounded court proceedings: This Chapter deals with requirements and procedural safeguards to grant an early dismissal in court proceedings that are manifestly unfounded.

Article 9 states that early dismissal is granted when the claim brought against the defendant is, in full or in part, manifestly unfounded. If the main claim is dismissed later on in the ordinary proceeding, the defendant may still benefit from other remedies against abusive court proceedings, if elements of abuse are then recognised.

Article 10 provides that if the defendant applied for early dismissal, the main proceedings are stayed until a final decision on that application is taken. A stay of the proceedings initiated by the claimant ensures that procedural activity is suspended, hence reducing the procedural costs of the defendant. To avoid any impact on the effective access to justice, the stay should be temporary and kept only until a final decision on the application, which is no longer subject to judicial review, is taken.

Article 11 requires that an application for early dismissal is treated in an accelerated procedure, taking into account the circumstances of the case and the right to an effective remedy and the right to a fair trial. To ensure high expediency in the accelerated procedure, Member States may set time limits for the holding of hearings or for the court to take a decision. They may as well adopt schemes akin to procedures in relation to provisional measures.

Article 12 introduces a special rule on the burden of proof: if a defendant has applied for early dismissal showing that the statement or activity constitutes an act of public participation, it shall be for the claimant to prove that the claim is not manifestly unfounded. This does not represent a limitation of access to justice, taking into account that the claimant carries the burden of proof in relation to that claim and only needs to meet the much lower threshold of showing that the claim is not manifestly unfounded in order to avoid an early dismissal.

Article 13 provides that a decision granting or refusing early dismissal should be subject to appeal.

Chapter IV Remedies against abusive court proceedings: This Chapter contains provisions on award of costs, compensation of damages and penalties.

Article 14 provides that a claimant who has brought abusive court proceedings against public participation can be ordered to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant, unless such costs are excessive

Article 15 ensures that any natural or legal person who has suffered harm as a result of abusive court proceedings against public participation is able to claim and to obtain full compensation for that harm. This covers both material and immaterial damage. Material damage includes for example lawyer fees, when they are not reimbursable as costs, travel expenses and medical costs (for example for psychological assistance) if they are causally linked to the court proceedings. Pre-trial costs should be considered material damages, if they are not included in costs according to national laws. Immaterial damage covers different forms of physical and/or psychological harm. It includes, for example, pain and suffering or emotional distress related to the court proceedings, impairment of life or of relationship, reputational damage and in general, any types of intangible damage.

Article 16 provides for the possibility to impose effective, proportionate and dissuasive penalties on the party who brought abusive court proceedings against public participation. The main objective of this provision is to deter potential claimants from engaging in abusive court proceedings against public participation. Penalties will be paid to Member States.

Chapter V Protection against third-country judgements: This Chapter contains remedies to protect the defendant against abusive court proceedings brought in third countries' courts.

Article 17 requires Member States to ensure that the recognition and enforcement of a third-country judgment in court proceedings on account of public participation by natural or legal person domiciled in a Member State is refused as manifestly contrary to public policy (*ordre public*) if those proceedings would have been considered manifestly unfounded or abusive if they had been brought before the courts of the Member State where recognition or enforcement is sought and those courts would have applied their own law.

Article 18 provides, as additional remedy against a third-country judgment, that where abusive court proceedings against public participation have been brought against a natural or legal person domiciled in a Member State in a court or tribunal of a third country, that person can seek compensation of the damages and the costs incurred in connection with the proceedings before the court or tribunal of the third country, irrespective of the domicile of the claimant in the proceedings in the third country. This provision creates a new special ground of jurisdiction in order to ensure that targets of abusive court proceedings who are domiciled in the European Union have an efficient remedy available in the Union against abusive court proceedings brought in a court or tribunal of a third country.

Chapter VI Final provisions: This Chapter contains rules on the relationship of the Directive with the 2007 Lugano Convention, on the review of the application of the Directive, on the transposition into national law, on entry into force and on Member States as addressees.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2)(f) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 2 of the Treaty on European Union states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
- (2) Article 10(3) of the Treaty on European Union states that every Union citizen has the right to participate in the democratic life of the Union. The Charter of Fundamental Rights of the European Union (the ‘Charter’) provides, *inter alia*, for the rights to respect for private and family life (Article 7), the protection of personal data (Article 8), freedom of expression and information, which includes respect for the freedom and pluralism of the media (Article 11), and to an effective remedy and to a fair trial (Article 47).
- (3) The right to freedom of expression and information as set forth in Article 11 of the Charter includes the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Article 11 of the Charter should be given the meaning and scope of the correspondent Article 10 of the European Convention on Human Rights (“ECHR”) on the right to freedom of expression as interpreted by the European Court of Human Rights (“ECtHR”).
- (4) The purpose of this Directive is to provide protection to natural and legal persons who engage in public participation on matters of public interest, in particular journalists and human rights defenders, against court proceedings, which are initiated against them to deter them from public participation (commonly referred to as *strategic lawsuits against public participation* or ‘SLAPPs’).
- (5) Journalists play an important role in facilitating public debate and in the imparting and reception of information, opinions and ideas. It is essential that they are afforded the necessary space to contribute to an open, free and fair debate and to counter disinformation, information manipulation and interference. Journalists should be able to conduct their activities effectively to ensure that citizens have access to a plurality of views in European democracies.

- (6) Investigative journalists in particular play a key role in combating organised crime, corruption and extremism. Their work carries particularly high risks and they are experiencing a growing number of attacks and harassment. A robust system of safeguards is needed to enable them to fulfil their crucial role as watchdogs on matters of legitimate public interest.
- (7) Human rights defenders also play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law. They should be able to participate actively in public life and make their voice heard on policy matters and in decision-making processes without fear of intimidation. Human rights defenders refer to individuals or organisations engaged in defending fundamental rights and a variety of other rights, such as environmental and climate rights, women's rights, LGBTIQ rights, the rights of the people with a minority racial or ethnic background, labour rights or religious freedoms. Other participants in public debate, such as academics and researchers, also deserve adequate protection.
- (8) A healthy and thriving democracy requires that people are able to participate actively in public debate without undue interference by public authority or other powerful actors, be they domestic or foreign. In order to secure meaningful participation, people should be able to access reliable information, which enables them to form their own opinions and exercise their own judgement in a public space in which different views can be expressed freely.
- (9) To foster this environment, it is important to protect journalists and human rights defenders from court proceedings against public participation. Such court proceedings are not initiated for the purpose of access to justice, but to silence public debate typically using harassment and intimidation.
- (10) SLAPPs are typically initiated by powerful entities, for example individuals, lobby groups, corporations and state organs. They often involve an imbalance of power between the parties, with the claimant having a more powerful financial or political position than the defendant. Although not being an indispensable component of such cases, where present, an imbalance of power significantly increases the harmful effects as well as the chilling effects of court proceedings against public participation.
- (11) Court proceedings against public participation may have an adverse impact on the credibility and reputation of journalists and human rights defenders and exhaust their financial and other resources. Because of such proceedings, the publication of information on a matter of public interest may be delayed or altogether avoided. The length of procedures and the financial pressure may have a chilling effect on journalists and human rights defenders. The existence of such practices may therefore have a deterrent effect on their work by contributing to self-censorship in anticipation of possible future court proceedings, which leads to the impoverishment of public debate to the detriment of society as a whole.
- (12) Those targeted by court proceedings against public participation may face multiple cases simultaneously, sometimes initiated in several jurisdictions. Proceedings initiated in the jurisdiction of one Member State against a person resident in another Member State are usually more complex and costly for the defendant. Claimants in court proceedings against public participation may also use procedural tools to drive up the length and cost of the litigation, and bring cases in a jurisdiction they perceive to be favourable for their case, rather than to the court best placed to hear the claim. Such practices also place unnecessary and harmful burdens on national court systems.

- (13) The safeguards provided in this Directive should apply to any natural or legal person on account of their engagement in public participation. They should also protect natural or legal persons who, either on a professional or on a personal basis, support, assist or provide goods or services to another person for purposes directly linked to public participation on a matter of public interest. This involves for example internet providers, publishing houses or print shops, which face or are threatened with court proceedings for providing services to the person targeted with court proceedings.
- (14) This Directive should apply to any type of legal claim or action of a civil or commercial nature with cross-border implications whatever the nature of the court or tribunal. This includes civil claims brought in criminal proceedings. It also includes interim and precautionary measures, counteractions or other particular type of remedies available under other instruments.
- (15) The Directive does not apply to claims arising out of liability of the State for actions or omissions in the exercise of State authority (*acta iure imperii*) and claims against officials who act on behalf of the State and liability for acts of public authorities, including liability of publicly appointed office-holders.
- (16) Public participation should mean any statement or activity by a natural or legal person expressed or carried out in exercise of the right to freedom of expression and information on a matter of public interest, such as the creation, exhibition, advertisement or other promotion of journalistic, political, scientific, academic, artistic, commentary or satirical communications, publications or works, and any preparatory activities directly linked thereto. It can also include activities related to the exercise of the right to freedom of association and peaceful assembly, such as the organisation of or participation to lobbying activities, demonstrations and protests or activities resulting from the exercise of the right to good administration and the right to an effective remedy, such as the filing of complaints, petitions, administrative and judicial claims and participation in public hearings. Public participation should also include preparatory, supporting or assisting activities that have a direct and inherent link to the statement or activity in question and that are targeted to stifle public participation. In addition, it can cover other activities meant to inform or influence public opinion or to further action by the public, including activities by any private or public entity in relation to an issue of public interest, such as the organisation of or participation to research, surveys, campaigns or any other collective actions.
- (17) Public participation should not normally cover commercial advertisement and marketing activity, which are typically not made in the exercise of freedom of expression and information.
- (18) The notion of a matter of public interest should include also quality, safety or other relevant aspects of goods, products or services where such matters are relevant to public health, safety, the environment, climate or enjoyment of fundamental rights. A purely individual dispute between a consumer and a manufacturer or a service provider concerning a good, product or service should be covered only when the matter contains an element of public interest, for instance concerning a product or service which fails to comply with environmental or safety standards.
- (19) Activities of a person or entity in the public eye or of public interest are also matters of public interest to which the public may legitimately take an interest in. However, there is no legitimate interest involved where the sole purpose of a statement or activity concerning such a person or entity is to satisfy the curiosity of a particular audience regarding the details of a person's private life.

- (20) Abusive court proceedings typically involve litigation tactics used in bad faith such as delaying proceedings, causing disproportionate costs to the defendant in the proceedings or forum shopping. These tactics are used by the claimant for other purposes than gaining access to justice. Such tactics are often, although not always, combined with various forms of intimidation, harassment or threats.
- (21) A cross-border dimension of SLAPPs adds to the complexity and challenges faced by defendants, as they need to deal with proceedings in other jurisdictions, sometimes in multiple jurisdictions at the same time. This, in turn, results in additional costs and burdens with even more adverse consequences.
- (22) A matter should be considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised. Even where both parties are domiciled in the same Member State as the court seised, a matter should be considered to have cross-border implications in two other types of situations. The first situation is where the specific act of public participation concerning a matter of public interest at stake is relevant to more than one Member State. That includes for instance public participation in events organised by Union institutions, such as appearances in public hearings, or statements or activities on matters that are of specific relevance to more than one Member State, such as cross-border pollution or allegations of money laundering with potential cross-border involvement. The second situation where a matter should be considered to have cross-border implications is when the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State. These two types of situations take into consideration the specific context of SLAPPs.
- (23) Defendants should be able to apply for the following procedural safeguards: a request for a security to cover procedural costs, or procedural costs and damages, a request for an early dismissal of manifestly unfounded court proceedings, a request for remedies against abusive court proceedings (award of costs, compensation of damages and penalties), or all of them at the same time.
- (24) In some abusive court proceedings against public participation, claimants deliberately withdraw or amend claims or pleadings to avoid awarding costs to the successful party. This legal strategy may deprive the court or tribunal of the power to acknowledge the abusiveness of the court proceeding, leaving the defendant with no chance to be reimbursed of procedural costs. Such withdrawals or amendments should therefore not affect the possibility for the courts seised to impose remedies against abusive court proceedings.
- (25) If the main claim is dismissed later on in the ordinary proceedings, the defendant may still benefit of other remedies against abusive court proceedings such as award of costs and compensation of damages.
- (26) To provide the defendant with an additional safeguard, there should be a possibility to grant him or her a security to cover procedural costs and/or damages, when the court considers that even if the claim is not manifestly unfounded, there are elements indicating an abuse of procedure and the prospects for success in the main proceedings are low. A security does not entail a judgement on the merits but serves as a precautionary measure ensuring the effects of a final decision finding an abuse of procedure. It should be for Member States to decide whether a security should be ordered by the court on its own motion or upon request by the defendant.

- (27) A stay of the proceedings, when an application for early dismissal has been filed, ensures that procedural activity is suspended, hence reducing the procedural costs of the defendant.
- (28) To avoid any impact on the access to an effective remedy, the stay should be temporary and kept until a final decision on the application is taken. A final decision means a decision that is no longer subject to judicial review.
- (29) To ensure high expediency in the accelerated procedure on an application for early dismissal, Member States may set time limits for the holding of hearings or for the court to take a decision. They may as well adopt schemes akin to procedures in relation to provisional measures. Member States should make efforts to ensure that when the defendant has applied for other procedural safeguards, the decision is also taken in an expeditious manner. For expeditious treatment, Member States could take into account, amongst others, whether the claimant has initiated multiple or concerted proceedings in similar matters and the existence of attempts to intimidate, harass or threat the defendant.
- (30) If a defendant has applied for early dismissal, it should be for the claimant in the main proceedings to prove in the accelerated procedure that the claim is not manifestly unfounded. This does not represent a limitation of access to justice, taking into account that the claimant carries the burden of proof in relation to that claim in the main proceedings and only needs to meet the much lower threshold of showing that the claim is not manifestly unfounded in order to avoid an early dismissal.
- (31) Costs should include all costs of the proceedings, including the full costs of legal representation incurred by the defendant unless such costs are excessive. Costs of legal representation exceeding amounts laid down in statutory fee tables should not be considered as excessive per se. Full compensation of damages should include both material and immaterial damages, such as physical and psychological harm.
- (32) The main objective of giving courts or tribunals the possibility to impose penalties is to deter potential claimants from initiating abusive court proceedings against public participation. Such penalties should be proportionate to the elements of abuse identified. When establishing amounts for penalties, courts should take into account the potential for a harmful or chilling effect of the proceedings on public participation, including as related to the nature of the claim, whether the claimant has initiated multiple or concerted proceedings in similar matters and the existence of attempts to intimidate, harass or threat the defendant.
- (33) In the cross-border context, it is also important to recognize the threat of SLAPPs from third countries targeting journalists, human rights defenders and other persons engaged in public participation who are domiciled in the European Union. They may involve excessive damages awarded against EU journalists, human rights defenders and others. Court proceedings in third-countries are more complex and costly for the targets. To protect democracy and freedom of expression and information in the European Union and to avoid that the safeguards provided by this Directive are undermined by recourse to court proceedings in other jurisdictions, it is important to provide protection also against manifestly unfounded and abusive court proceedings in third countries.
- (34) This Directive creates a new special ground of jurisdiction in order to ensure that targets of SLAPPs domiciled in the European Union have an efficient remedy available in the Union against abusive court proceedings brought in a court or tribunal of a third country. This special ground of jurisdiction allows the targets domiciled in

the European Union to seek, in the courts or tribunals of their domicile, for compensation of damages and costs incurred in connection with the proceedings before the court or tribunal of the third country. This right applies irrespective of the domicile of the claimant in the proceedings in the third country.

- (35) This Directive should be without prejudice to the protection that other instruments of Union law or national law provide to natural and legal persons that engage in public participation. In particular, it does not detract in any way from the protection offered by Directive 2019/1937 on the protection of persons who report breaches of Union law²⁷, as implemented in national law. As regards situations falling within the scope of this Directive and of Directive 2019/1937, the protection offered by both acts should therefore apply.
- (36) This Directive is complementary to the Commission recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”). This recommendation is addressed to Member States and it provides a comprehensive toolbox of measures including training, awareness-raising, support to targets of abusive court proceedings and data collection, reporting and monitoring of court proceedings against public participation.
- (37) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (38) [In accordance with Articles 1, 2 and 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application] OR
- (39) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...,] its wish to take part in the adoption and application of this Directive.]

²⁷ OJ L 305, 26.11.2019, p. 17-56.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Subject matter

This Directive provides safeguards against manifestly unfounded or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons, in particular journalists and human rights defenders, on account of their engagement in public participation.

Article 2

Scope

This Directive shall apply to matters of a civil or commercial nature with cross-border implications, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. **‘public participation’** means any statement or activity by a natural or legal person expressed or carried out in the exercise of the right to freedom of expression and information on a matter of public interest, and preparatory, supporting or assisting action directly linked thereto. This includes complaints, petitions, administrative or judicial claims and participation in public hearings;
2. **‘matter of public interest’** means any matter which affects the public to such an extent that the public may legitimately take an interest in it, in areas such as:
 - (a) public health, safety, the environment, climate or enjoyment of fundamental rights;
 - (b) activities of a person or entity in the public eye or of public interest;
 - (c) matters under public consideration or review by a legislative, executive, or judicial body, or any other public official proceedings;
 - (d) allegations of corruption, fraud or criminality;
 - (e) activities aimed to fight disinformation;
3. **‘abusive court proceedings against public participation’** mean court proceedings brought in relation to public participation that are fully or partially unfounded and have as their main purpose to prevent, restrict or penalize public participation. Indications of such a purpose can be:
 - (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof;

- (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
- (c) intimidation, harassment or threats on the part of the claimant or his or her representatives.

Article 4

Matters with cross-border implications

1. For the purposes of this Directive, a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised.
2. Where both parties to the proceedings are domiciled in the same Member State as the court seised, the matter shall also be considered to have cross-border implications if:
 - (a) the act of public participation concerning a matter of public interest against which court proceedings are initiated is relevant to more than one Member State, or
 - (b) the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State.

CHAPTER II

Common rules on procedural safeguards

Article 5

Applications for procedural safeguards

1. Member States shall ensure that when court proceedings are brought against natural or legal persons on account of their engagement in public participation, those persons can apply for:
 - (a) security in accordance with Article 8;
 - (b) early dismissal of manifestly unfounded court proceedings in accordance with Chapter III;
 - (c) remedies against abusive court proceedings in accordance with Chapter IV.
2. Such applications shall include:
 - (a) a description of the elements on which they are based;
 - (b) a description of the supporting evidence.
3. Member States may provide that measures on procedural safeguards in accordance with Chapters III and IV can be taken by the court or tribunal seised of the matter *ex officio*.

Article 6

Subsequent amendment to claim or pleadings

Member States shall ensure that any subsequent amendments to the claims or the pleadings made by the claimant in the main proceedings, including the discontinuation of proceedings, do not affect the possibility for the court or tribunal seised of the matter to consider the court proceedings abusive and to impose remedies in accordance with Chapter IV.

Article 7

Third party intervention

Member States shall take the necessary measures to ensure that a court or tribunal seised of court proceedings against public participation may accept that non-governmental organisations safeguarding or promoting the rights of persons engaging in public participation may take part in those proceedings, either in support of the defendant or to provide information.

Article 8

Security

Member states shall ensure that in court proceedings against public participation, the court or tribunal seised has the power to require the claimant to provide security for procedural costs, or for procedural costs and damages, if it considers such security appropriate in view of presence of elements indicating abusive court proceedings.

CHAPTER III

Early dismissal of manifestly unfounded court proceedings

Article 9

Early dismissal

1. Member States shall empower courts and tribunals to adopt an early decision to dismiss, in full or in part, court proceedings against public participation as manifestly unfounded.
2. Member States may establish time limits for the exercise of the right to file an application for early dismissal. The time limits shall be proportionate and not render such exercise impossible or excessively difficult.

Article 10

Stay of the main proceedings

Member States shall ensure that if the defendant applies for early dismissal, the main proceedings are stayed until a final decision on that application is taken.

Article 11

Accelerated procedure

Member States shall ensure that an application for early dismissal is treated in an accelerated procedure, taking into account the circumstances of the case and the right to an effective remedy and the right to a fair trial.

Article 12

Burden of proof

Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to prove that the claim is not manifestly unfounded.

Article 13

Appeal

Member States shall ensure that a decision refusing or granting early dismissal pursuant to Article 9 is subject to an appeal.

CHAPTER IV

Remedies against abusive court proceedings

Article 14

Award of costs

Member States shall take the necessary measures to ensure that a claimant who has brought abusive court proceedings against public participation can be ordered to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant, unless such costs are excessive.

Article 15

Compensation of damages

Member States shall take the necessary measures to ensure that a natural or legal person who has suffered harm as a result of an abusive court proceedings against public participation is able to claim and to obtain full compensation for that harm.

Article 16

Penalties

Member States shall provide that courts or tribunals seised of abusive court proceedings against public participation have the possibility to impose effective, proportionate and dissuasive penalties on the party who brought those proceedings.

CHAPTER V

Protection against third-country judgments

Article 17

Grounds for refusal of recognition and enforcement of a third-country judgment

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

Article 18

Jurisdiction for actions against third-country judgments

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

CHAPTER VI

Final provisions

Article 19

Relations with the 2007 Lugano Convention

This Directive shall not affect the application of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007.

Article 20

Review

Member States shall provide the Commission with all relevant information regarding the application of this Directive by [5 years from the date of transposition]. On the basis of the information provided, the Commission shall by [6 years from the date of transposition] at the latest, submit to the European Parliament and the Council a report on the application of this Directive. The report shall provide an assessment of the evolution of abusive court proceedings against public participation and the impact of this Directive in the Member States. If necessary, the report shall be accompanied by proposals to amend this Directive.

Article 21

Transposition into national law

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years from the date of entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 22

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 23

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President