



Plenary sitting

A9-0223/2023

29.6.2023

*****I**

REPORT

on the 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”)
(COM(2022)0177 – C9-0161/2022 – 2022/0117(COD))

Committee on Legal Affairs

Rapporteur: Tiemo Wölken

Rapporteur for the opinion of the associated committee pursuant to Rule 57 of the Rules of Procedure
Ramona Strugariu, Committee on Civil Liberties, Justice and Home Affairs

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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”)
(COM(2022)0177 – C9-0161/2022 – 2022/0117(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0177),
 - having regard to Article 294(2) and Article 81(2)(f) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0161/2022),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Czech Senate and the French Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 26 October 2022¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the opinions of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Culture and Education,
 - having regard to the report of the Committee on Legal Affairs (A9-0223/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Suggests that the act be cited as 'the Tiemo Wölken-... Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)²;
 3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 4. Instructs its President to forward its position to the Council, the Commission and the

¹ Not yet published in the Official Journal.

² Tiemo Wölken and ... led the negotiations on the act on behalf of Parliament and the Council respectively.

national parliaments.

Amendment 1

Proposal for a directive

Citation 2 a (new)

Text proposed by the Commission

Amendment

Having regard to the opinion of the European Economic and Social Committee,

Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

Amendment

(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).

(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), ***freedom of assembly and of association (Article 12)*** and to an effective remedy and to a fair trial (Article 47).

Amendment 3

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The right to freedom of expression is a fundamental right that is to be

exercised with a sense of duty and responsibility, taking into account people's fundamental right to obtain impartial information as well as the respect for the fundamental right to protect one's reputation, protection of personal data and privacy. In cases of a conflict between these rights, all parties are to have access to courts with due respect to the fair trial principle.

Amendment 4

Proposal for a directive Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) In its resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the Union, the European Parliament called on the Commission to propose a package of both soft and hard law to address the increasing number of strategic lawsuits against public participation or 'SLAPPs' concerning journalists, NGOs, academics and civil society in the Union. Parliament proposed legislative measures in the areas of civil and criminal procedural law, such as an early dismissal mechanism for abusive civil lawsuits, the right to the full award of costs incurred by the defendant, and the right to compensation for damage. The resolution of 11 November 2021 also included a call for adequate training for judges and legal practitioners on SLAPPs, a specific fund to provide financial support for the victims of SLAPPs and a public register of court decisions on SLAPP cases. In addition, Parliament called for the revision of Regulation (EU) No 1215/2012 of the European Parliament and of the Council^{1a} ('Brussels I Regulation') and of Regulation (EC) No 864/2007 of the European Parliament and of the Council^{1b} ('Rome II Regulation') in order to prevent 'libel tourism' or 'forum

shopping'.

^{1a} Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p.1).

^{1b} Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, p. 40).

Amendment 5

Proposal for a directive Recital 4

Text proposed by the Commission

(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’).

Amendment

(4) The purpose of this Directive is to provide *for minimum rules at Union level in order to ensure the* protection *of* natural and legal persons who engage in public participation on matters of public interest, *including* journalists, *publishers, media organisations, whistleblowers* and human rights defenders, *as well as civil society organisations, NGOs, trade unions, artists, researchers and academics*, against court proceedings initiated against them, *as well as the threats thereof*, to deter them from public participation (commonly referred to as strategic lawsuits against public participation or ‘SLAPPs’).

Amendment 6

Proposal for a directive Recital 5

Text proposed by the Commission

(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.

Amendment

(5) Journalists play an important role in facilitating public debate and in the imparting and reception of information, opinions and ideas. ***Independent, professional and responsible journalism, as well as access to pluralistic information, are key pillars of democracy.*** It is essential that journalists 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 ***and without fear*** to ensure that citizens have access to a plurality of views in European democracies.

Amendment 7

**Proposal for a directive
Recital 6**

Text proposed by the Commission

(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.

Amendment

(6) Investigative journalists ***and media organisations*** in particular play a key role in ***uncovering and*** combating organised crime, ***abuse of power***, corruption, ***fundamental rights violations*** and extremism. Their work carries particularly high risks and they are experiencing a growing number of attacks, ***killings, threats, intimidation*** and harassment. A robust system of safeguards ***and protection, including protection of their physical safety, is*** needed to enable ***investigative journalists*** to fulfil their crucial role as watchdogs on matters of public interest, ***without fear of punishment for searching for the truth and informing the public.***

Amendment 8

Proposal for a directive
Recital 7

Text proposed by the Commission

(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.**

Amendment 9

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7) Human rights defenders also play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection, **gender equality** and the rule of law. **Considering the Union's environmental and climate policies, attention should also be given to the protection of environmental rights defenders. Human rights defenders** should be able to participate actively in public life, **promote accountability** 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.

(7a) Participants in public debate, other than journalists, media organisations or human rights defenders, such as academics, researchers or artists, also deserve adequate protection. In a democratic society, they should be able to research, teach, learn, perform and communicate without fear of reprisal. Academics and researchers contribute fundamentally to public discourse and dissemination of knowledge, as well as

ensure that the democratic debate can take place on an informed basis and counter disinformation.

Amendment 10

Proposal for a directive

Recital 9

Text proposed by the Commission

(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.

Amendment

(9) To foster this environment, it is important to protect ***natural and legal persons*** from court proceedings against public participation. Such court proceedings are not initiated for the purpose of access to justice, but to silence public debate ***and prevent investigation of and reporting on breaches of Union and national law, including corruption or other abusive practices*** typically using harassment and intimidation.

Amendment 11

Proposal for a directive

Recital 10

Text proposed by the Commission

(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.

Amendment

(10) SLAPPs are typically initiated by powerful entities, for example individuals, lobby groups, corporations, ***public officials, publicly controlled entities, politicians, judicial authorities*** and state organs ***in an attempt to silence public debate***. 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.

Amendment 12

Proposal for a directive

Recital 11

Text proposed by the Commission

(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.

Amendment

(11) Court proceedings against public participation may have an adverse impact on the credibility and reputation of **natural and legal persons that engage in public participation** 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 **natural and legal persons that engage in public participation**. 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.

Amendment 13

Proposal for a directive

Recital 12

Text proposed by the Commission

(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

Amendment

(12) Those targeted by court proceedings against public participation may face multiple cases simultaneously, **which can be civil, administrative or criminal or a combination of those**, 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

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.

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 (***forum shopping***), rather than to the court best placed to hear the claim. ***The length and variety of procedures, the financial pressure and the threat of penalties, constitute powerful tools to intimidate and silence critical voices.*** Such practices also place unnecessary and harmful burdens on national court systems ***and lead to misuse of their resources, thus constituting an abuse of judicial systems.***

Amendment 14

Proposal for a directive Recital 13

Text proposed by the Commission

(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.

Amendment

(13) The safeguards provided in this Directive should apply to any natural or legal person on account of their ***direct or indirect*** 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 ***lawyers, family members,*** internet providers, publishing houses or print shops, which face or are threatened with court proceedings for ***assisting, providing support or*** services to the person targeted with court proceedings.

Amendment 15

Proposal for a directive Recital 15

Text proposed by the Commission

(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.

Amendment

(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, ***unless national law provides for it. In line with established case law of the Court of Justice of the European Union, court proceedings might still fall within the scope of ‘civil and commercial matters’ as referred to in this Directive where a State or a public body is a party, if the acts or omissions do not occur in the exercise of State authority.***

Amendment 16

**Proposal for a directive
Recital 15 a (new)**

Text proposed by the Commission

Amendment

(15a) This Directive lays down minimum rules, thus enabling the Member States to adopt or maintain provisions that are more favourable to persons engaging in public participation, including national law establishing more effective procedural safeguards, such as a double penalty whereby, in full respect of the right to a fair trial, the court is able to not only award the costs or compensation to the defendant but also impose a penalty to be paid to the State by the claimant when it is clear that the litigation it commenced was vexatious, frivolous or in bad faith. The implementation of this Directive should not serve to justify any regression in relation to the level of protection that already exists in each Member State.

Amendment 17

Proposal for a directive Recital 16

Text proposed by the Commission

(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.

Amendment

(16) Public participation should mean any statement, activity **or preparatory, supporting or assisting action directly linked thereto**, by a natural or legal person expressed or carried out in **the** exercise of **fundamental and human rights and freedoms such as** 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 **academic and artistic freedom**, 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.

Amendment 18

Proposal for a directive
Recital 18

Text proposed by the Commission

(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.

Amendment

(18) The notion of a matter of public interest ***should include matters relevant to the enjoyment of fundamental rights, including gender equality, protection from gender-based violence and non-discrimination, and the protection of the rule of law, media freedom and pluralism, and the environment. It*** 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, ***consumer and labour*** 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.

Amendment 19

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Allegations of corruption, fraud, embezzlement, money laundering, extortion, coercion, sexual harassment and gender-based violence, or other forms of intimidation and criminality, or any other criminal or administrative offence, including financial criminality and environmental crime, qualify as matters of public interest. Activities aimed to protect the values enshrined in Article 2 TEU, the principle of non-interference in democratic processes, and providing or facilitating public access to information

with a view to fighting disinformation also qualify as matters of public interest.

Amendment 20

Proposal for a directive

Recital 20

Text proposed by the Commission

(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.

Amendment

(20) *The imbalance of power between the parties which is characteristic of SLAPPs typically derives from the misuse of economic advantage or political influence by the claimant against the defendant, together with the lack of legal merit. Other indicators for abusive court proceedings typically involve litigation tactics used in bad faith such as **relying on one or more fully or partially unfounded claims, making excessive claims,** delaying proceedings **or discontinuing cases at a later stage of the proceedings, initiating multiple proceedings on similar matters,** causing disproportionate costs to the defendant in the proceedings or forum shopping. **The past conduct of the claimant and, in particular, any history of legal intimidation should also be considered when determining whether the court proceedings are abusive in nature.** These tactics are used by the claimant for other purposes than gaining access to justice **or genuinely exercising a right.** Such tactics are often, although not always, combined with various forms of intimidation, harassment or threats.*

Amendment 21

Proposal for a directive

Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Manifestly unfounded or abusive

court proceedings against public participation are becoming more sophisticated and more effective, with one of the techniques used being multiple lawsuits filed against the same person on the same subject matter, meaning that all of them have to be defended and dealt with simultaneously and in parallel by the same person, which increases costs disproportionately.

Amendment 22

Proposal for a directive Recital 20 b (new)

Text proposed by the Commission

Amendment

(20b) SLAPPs are consistently characterised by an imbalance of power between the claimant and the defendant in terms of financial and legal resources. This imbalance of power gives rise to particular concern if the abusive lawsuits are funded directly or indirectly from state budgets and are combined with other indirect and direct state measures against independent media organisations, independent journalism and civil society.

Amendment 23

Proposal for a directive Recital 20 c (new)

Text proposed by the Commission

Amendment

(20c) Abusive court proceedings against public participation often infringe on defendants' right to defence recognised by the Charter, and might also impact on their right to a fair trial and the presumption of innocence.

Amendment 24

Proposal for a directive
Recital 22

Text proposed by the Commission

(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.

Amendment

(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 is relevant to, more than one Member State ***due to the cross-border dimension of the act itself or due to a legitimate interest which the public may take in the matter concerned by the act, including if the act is accessible via electronic means. Such situations include*** for instance public participation ***acts, such as*** events organised by Union institutions, appearances in public hearings or ***widely disseminated publications. They could include as well*** statements or activities on matters, such as cross-border pollution, or allegations of money laundering with potential cross-border involvement. ***An act of public participation should be considered to be accessible in more than one Member State, in particular, if it is carried out on the internet, for example in the case of social media campaigns or online media coverage. The ubiquitous nature of the internet warrants considering acts of public participation that are accessible in more than one Member State to be matters with cross-border implications. The effect of digital means of communication on the notion of cross-border elements has already been recognised in the case law of the Court of Justice of the European Union.*** 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.

Amendment 25

Proposal for a directive Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) Support should be available to persons targeted by court proceedings against public participation from the moment competent authorities become aware of such persons and throughout the proceedings, in accordance with the rights set out in this Directive. Support should be made available by a variety of means, including by providing comprehensive and independent information and advice, in a manner that is easily accessible to the public and free of charge, on procedures and remedies available, on protection against intimidation, harassment or threats of legal action, and on the rights of the person concerned, and by providing legal aid in cross-border civil proceedings, legal aid in further proceedings and legal counselling or other legal assistance which is deemed appropriate. Member States should provide for financial assistance and support measures, including psychological support, for those targeted by court proceedings against public participation.

Amendment 26

Proposal for a directive Recital 22 b (new)

(22b) Participation in proceedings against public participation exposes those targeted to particular psychological stress. The preparation for such proceedings and participation therein additionally ties up valuable resources of the defendants that they often do not have or that otherwise would have been invested in engaging in public participation. Associations, organisations and other collective bodies, such as trade unions, and any other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in safeguarding the rights of the defendant should therefore have the possibility of participating in the proceedings, either on behalf or in support of the defendant, with his or her approval, or of providing information in the judicial procedures provided for the enforcement of obligations under this Directive. Such possibility of legal representation should be without prejudice to the rights and competences of trade unions and worker's representatives to engage on behalf of or in support of workers in judicial proceedings, in accordance with other Union and national rules.

Amendment 27

Proposal for a directive Recital 23

(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

(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.

and penalties), or all of them at the same time. ***Court proceedings brought against natural or legal persons on account of their engagement in public participation should be dealt with in a swift and effective manner, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.***

Amendment 28

Proposal for a directive Recital 26

Text proposed by the Commission

(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.

Amendment

(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. ***Where national law so provides, it should be possible to grant security to the defendant at any stage of the court proceedings and the judge should be able to order that a provision for court fees be allocated to the defendant and be borne by the claimant considering, where appropriate, the financial situation of the parties and the predictable costs of the proceedings.*** 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 ***and covering the costs and damage caused to the defendant.*** 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.

Amendment 29

Proposal for a directive
Recital 29

Text proposed by the Commission

(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.

Amendment

(29) ***Courts or tribunals seised with an application for procedural safeguards, should act expeditiously in relation to that application, using the most efficient procedures available under national law.***

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.

Amendment 30

Proposal for a directive
Recital 30

Text proposed by the Commission

(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

Amendment

(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.

manifestly unfounded in order to avoid an early dismissal. *In addition, decisions of early dismissal should always be made by a judge, on a case-by-case basis, and the claimants should always be entitled to lodge an appeal against the early decision to dismiss.*

Amendment 31

Proposal for a directive Recital 31

Text proposed by the Commission

(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.*

Amendment

(31) Costs should include all costs of the proceedings, including the full costs of legal representation, *including pre-trial costs* 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, *but allow costs to be awarded in full. Where national law does not provide for the full award of costs beyond statutory fees, the court should be able to award the full costs by whatever other means are available, in accordance with national law, including through the compensation of damages.*

Amendment 32

Proposal for a directive Recital 31 a (new)

Text proposed by the Commission

Amendment

(31a) Full compensation for damage should include both material and non-material damage, such as physical, reputational and psychological harm. In order for the defendant to be able to claim damages easily and in a timely manner, it should be possible to seek damages in the

same proceedings as those brought against the defendant, where appropriate through a counterclaim. Material damage should include in particular lawyer fees, when they are not reimbursable as costs, travel expenses and medical costs, in particular for psychological care. Material damage should include pre-trial costs, if they are not included in costs under national law or this directive. Pre-trial costs should also include necessary expenses incurred in respect of defending the person's rights against abusive claims, including lawyer fees. Non-material damage should include in particular different forms of physical and/or psychological harm, pain and suffering or emotional distress related to the court proceedings, reputational damage and in general, any types of intangible damage.

Amendment 33

Proposal for a directive Recital 32

Text proposed by the Commission

(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.

Amendment

(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 determined on a case by case basis and*** 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.

Amendment 34

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) To ensure that the public can become aware of court decisions, Member States should establish a publicly accessible national register of relevant court decisions falling within the scope of this directive, in accordance with Union and national rules on the protection of personal data. The Commission should establish a publicly accessible Union register on the basis of the information from the registers of the Member States concerning relevant court decisions falling within the scope of this Directive, in accordance with Union rules on the protection of personal data.

Amendment 35

Proposal for a directive Recital 33

Text proposed by the Commission

Amendment

(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

(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 ***persons engaging in public participation***. 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.

manifestly unfounded and abusive court proceedings in third countries.

Amendment 36

Proposal for a directive Recital 33 a (new)

Text proposed by the Commission

Amendment

(33a) As regards jurisdiction for defamation claims or other claims based on civil or commercial law which could constitute abusive court proceedings against public participation, the Member State of domicile of the defendant should be considered as the sole forum, having due regard to cases where the defendants in cases of defamation are natural persons. With the exception of that rule concerning cases falling within the scope of this Directive, this Directive should not affect the application of the Brussels I Regulation.

Amendment 37

Proposal for a directive Recital 33 b (new)

Text proposed by the Commission

Amendment

(33b) This Directive establishes a special ground for the applicable law for publications as an act of public participation. In claims regarding a publication as an act of public participation, the applicable law should be considered to be the law of the place to which that publication is directed. Should it not be possible to identify that place, the applicable law should be the law of the place of editorial control or of the relevant activity with regard to the act of public participation. In cases other than those covered by that exception, this Directive

should not affect the application of Rome II Regulation.

Amendment 38

Proposal for a directive Recital 34

Text proposed by the Commission

(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.

Amendment

(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 ***or reasonably expected to be 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.

Amendment 39

Proposal for a directive Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with persons targeted by court proceedings against public participation, in particular with regard to policy-making initiatives, information and awareness-raising campaigns, research and education programmes, and training, as well as monitoring and evaluation of the

impact of such measures.

Amendment 40

Proposal for a directive Recital 34 b (new)

Text proposed by the Commission

Amendment

(34b) The provisions and safeguards of this Directive should apply to all pending abusive court proceeding against public participation before a national court at the time of entry into force of the national rules transposing this Directive and thereafter.

Amendment 41

Proposal for a directive Recital 34 c (new)

Text proposed by the Commission

Amendment

(34c) Member States should be encouraged to take appropriate action to facilitate their cooperation to improve the access of those targeted by court proceedings against public participation to information on the procedural safeguards set out in this Directive and under national law. Such cooperation should cover the exchange of information on current practices within the Member States in cross-border cases and the provision of assistance, where appropriate, to European networks and bodies such as the Fundamental Rights Agency, working on matters directly relevant to those targeted by court proceedings against public participation.

Amendment 42

Proposal for a directive
Recital 34 d (new)

Text proposed by the Commission

Amendment

(34d) With due respect for the independence of the legal profession, Member States should encourage the adoption by professional associations of deontological rules that guide the conduct of legal professionals to discourage the taking of abusive lawsuits against public participation, including, where appropriate, disciplinary sanctions for the violation of those rules. Such measures should be developed in close cooperation with relevant stakeholders including professional associations, social partners and civil society organisations.

Amendment 43

Proposal for a directive
Recital 34 e (new)

Text proposed by the Commission

Amendment

(34e) The collection of data is paramount to document cases of abusive court proceedings and to provide solutions in order to prevent them. This Directive should establish common criteria to standardise the data collection procedures in Member States and ensure that comparable data is collected. Member States should, on a regular basis, provide to the Commission available data showing how those targeted by court proceedings against public participation have accessed the safeguards set out in this Directive. Based on the data provided by the Member States, the Commission should submit a report every five years on the evaluation and review of this Directive to the European Parliament and to the Council. Those reports should be made public.

Amendment 44

Proposal for a directive

Recital 36

Text proposed by the Commission

(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.

Amendment

(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. ***When transposing this Directive, Member States should pay particular attention to the implementation of the Commission’s Recommendation as regards, in particular, the inclusion of safeguards, similar to those provided for by this Directive, in relation to domestic cases not covered by this Directive’s scope, and the provision of legal assistance to defendants in an affordable and easily accessible manner, and consider the inclusion in their national transposition laws of targeted provisions to that effect. Member States should also be encouraged to consider establishing a fund to support victims of SLAPPs, which should be directly used for legal fees or the provision of legal aid and psychological support.***

Amendment 45

Proposal for a directive

Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) This Directive lays down rules on comprehensive support and preventive measures, non-financial support mechanisms such as the provision of legal aid and psychological support, as well as training, awareness-raising and data collection measures. It also seeks to ensure that data are collected by establishing common criteria at Union level. A national focal point should be established to gather and share information on all organisations that provide guidance and support for targets of abusive court proceedings against public participation. Such organisations could include associations of legal professionals, media and press councils, umbrella associations for human rights defenders, associations at Union and national level, law firms defending targets of manifestly unfounded or abusive court proceedings against public participation pro bono, legal clinics of universities and other non-governmental organisations.

Amendment 46

Proposal for a directive Recital 36 b (new)

Text proposed by the Commission

Amendment

(36b) To foster prevention of the initiation of SLAPPs and protection of targeted natural or legal persons, it is crucial to promote relevant information, awareness-raising, campaigns, education and training, including on their rights and protection mechanisms.

Amendment 47

Proposal for a directive
Recital 36 c (new)

Text proposed by the Commission

Amendment

(36c) Training for journalists, other media professionals and human rights defenders should strengthen their capacity to deal with abusive court proceedings against public participation. It should focus on recognising such court proceedings, how to manage being targeted by them and inform them of their rights and obligations in order for them to be able to take the necessary steps to protect themselves against such proceedings. Training should also be provided to legal professionals in order to increase awareness of abusive court proceedings and be able to detect them at a very early stage.

Amendment 48

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

Amendment

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.

This Directive provides ***a set of minimum standards of protection and*** safeguards against manifestly unfounded or abusive court proceedings in civil matters, ***as well as the threats thereof***, with cross-border implications brought against natural and legal persons ***engaging*** in public participation.

Amendment 49

Proposal for a directive
Article 2 – paragraph 1

Text proposed by the Commission

Amendment

This Directive shall apply to matters of a

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).

civil or commercial nature **having** cross-border implications, **including interim and precautionary measures, counteractions or other particular types of remedies available under other instruments**, 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).

Amendment 50

Proposal for a directive Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Minimum requirements

- 1. Member States may introduce or maintain more favourable provisions than the safeguards provided for in this Directive against manifestly unfounded and abusive court proceedings in civil matters.**
- 2. The implementation of this Directive shall in no circumstances constitute grounds for a reduction in the level of safeguards already afforded by Member States in the matters covered by this Directive.**

Amendment 51

Proposal for a directive Article 3 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

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

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;

expression and information, ***academic freedom, or freedom of assembly and association***, and preparatory, supporting or assisting action directly linked thereto, ***on a matter of public interest***. This includes complaints, petitions, administrative or judicial claims, ***the participation*** in public hearings, ***the creation, exhibition, advertisement or other promotion of journalistic, political, scientific, academic, artistic, satirical communications, publications or works***;

Amendment 52

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point a

Text proposed by the Commission

(a) public health, safety, the environment, climate ***or enjoyment of fundamental rights***;

Amendment

(a) ***fundamental rights, including gender equality, media freedom and consumer and labour rights, as well as*** public health, safety, the environment ***or the*** climate;

Amendment 53

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point b

Text proposed by the Commission

(b) activities of a person or entity in the public eye or of public interest;

Amendment

(b) activities of a person or entity in the public eye or of public interest, ***including governmental officials and private entities***;

Amendment 54

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point d

Text proposed by the Commission

Amendment

(d) allegations of corruption, fraud **or criminality**;

(d) allegations of corruption, fraud, **embezzlement, money laundering, extortion, coercion, sexual harassment and gender-based violence, or other forms of intimidation, or any other criminal or administrative offence, including environmental crime**;

Amendment 55

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point e

Text proposed by the Commission

Amendment

(e) activities aimed to **fight** disinformation;

(e) activities aimed to **protect the values enshrined in Article 2 TEU, the principle of non-interference in democratic processes, and to provide or facilitate public access to information with a view to fighting** disinformation;

Amendment 56

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) academic, scientific, research and artistic activities.

Amendment 57

Proposal for a directive

Article 3 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

Amendment

‘abusive court proceedings against public participation’ mean court proceedings brought in relation to public participation

‘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:

that are fully or partially unfounded, ***characterised by elements indicative of a misuse of the judicial process for purposes other than genuinely asserting, vindicating or exercising a right*** and have as their main purpose to ***abusively*** prevent, restrict or penalize public participation. Indications of such a purpose can be:

Amendment 58

Proposal for a directive

Article 3 – paragraph 1 – point 3 – point -a (new)

Text proposed by the Commission

Amendment

(-a) the misuse of economic advantage or political influence by the claimant against the defendant, leading to an imbalance of power between the two parties;

Amendment 59

Proposal for a directive

Article 3 – paragraph 1 – point 3 – point c

Text proposed by the Commission

Amendment

(c) intimidation, harassment or threats on the part of the claimant or his or her representatives.

(c) intimidation, harassment or threats on the part of the claimant or his or her representatives, ***before or during the proceedings, as well as any previous history of legal intimidation by the claimant;***

Amendment 60

Proposal for a directive

Article 3 – paragraph 1 – point 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the use in bad faith of procedural tactics, such as delaying proceedings, and

choosing to pursue a claim that is subject to the jurisdiction of the court that will treat the claim most favourably, or the discontinuation of the cases at a later stage of the proceedings.

Amendment 61

Proposal for a directive

Article 4 – paragraph 2 – point a

Text proposed by the Commission

(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

Amendment

(a) the act of public participation is relevant to more than one Member State, ***either due to the cross-border dimension of the act itself or due to the legitimate interest which the public may take in the matter concerned by the act, including if the act is accessible via electronic means,*** or

Amendment 62

Proposal for a directive

Article 5 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Member States ***shall*** 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.

Amendment 63

Proposal for a directive

Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Expeditious court proceedings

Member States shall ensure that courts or tribunals seised with an application referred to in Article 5 act in the proceedings in relation to which the application has been sought using the most expeditious procedures available under national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.

Amendment 64

Proposal for a directive Article 5 b (new)

Text proposed by the Commission

Amendment

Article 5b

***Assistance to natural or legal persons
engaging in public participation***

Member States shall ensure that natural or legal persons engaging in public participation have access, as appropriate, to support measures, in particular the following:

- (a) comprehensive and independent information and advice which is easily accessible to the public and free of charge on procedures and remedies available, on protection against intimidation, harassment or threats of legal action, and on their rights; and***
- (b) legal aid in accordance with Directive 2003/8/EC of the Council, and, in accordance with national law, legal aid in further proceedings, and legal counselling or other legal assistance;***
- (c) financial assistance and support measures, including psychological support, for those targeted by abusive court proceedings against public participation.***

Amendment 65

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall take the necessary measures to ensure that a court or tribunal seised of court proceedings against public participation may accept that ***associations, organisations and other collective bodies, such as trade unions, and any other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in*** safeguarding or promoting the rights of persons engaging in public participation may take part in those proceedings, either ***on behalf or*** in support of the defendant, ***with his or her approval*** or to provide information, ***in any judicial procedure provided for the enforcement of obligations under this Directive. This provision is without prejudice to existing rights of representation and intervention as guaranteed by other Union or national rules.***

Amendment 66

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 costs ***of the proceedings, including the full costs of legal representation incurred by the defendant*** and damages, if it considers such security appropriate in view of presence of elements indicating abusive court proceedings. ***Where national law provides for such possibility, security may be granted to the defendant at any stage***

of the court proceedings.

Amendment 67

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States **shall** establish time limits for the exercise of the right to file an application for early dismissal. The time limits shall be proportionate, **reasonable** and not render such exercise impossible or excessively difficult.

Amendment 68

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall take the necessary measures to ensure that a claimant who has brought abusive court proceedings against public participation **is** 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. ***Where national law does not guarantee the award in full of the costs of legal representation beyond statutory fee tables, Member States shall ensure that such costs are fully covered by other means available under national law, and, where appropriate, through compensation of damages in accordance with Article 15.***

Amendment 69

Proposal for a directive

Article 15 – paragraph 1

Text proposed by the Commission

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.

Amendment

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, ***covering material or non-material harm, including reputational harm, without the need to initiate separate court proceedings to that end.***

Amendment 70

**Proposal for a directive
Article 16 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. Member States shall ensure that courts or tribunals imposing penalties take due account of:

- (i) the economic situation of the claimant;***
- (ii) the nature and number of the elements indicating an abuse identified.***

Amendment 71

**Proposal for a directive
Article 16 a (new)**

Text proposed by the Commission

Amendment

Article 16a

National registers

Member states shall take appropriate measures to establish a publicly accessible register of relevant court decisions falling within the scope of this Directive, in accordance with Union and national rules on the protection of personal data.

Amendment 72

Proposal for a directive Article 18 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 ***shall have the right to*** 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.

Amendment 73

Proposal for a directive Chapter V a (new)

Text proposed by the Commission

Amendment

Chapter Va

***Jurisdiction, applicable law and relations
with Union private international law
instruments***

Amendment 74

Proposal for a directive Article 18 a (new)

Text proposed by the Commission

Amendment

Article 18a

Jurisdiction for defamation claims

In defamation claims or other claims based on civil or commercial law which may constitute a claim under this Directive, the domicile of the defendant shall be considered to be the sole forum, having due regard to cases where the victims of defamation are natural persons.

Amendment 75

Proposal for a directive Article 18 b (new)

Text proposed by the Commission

Amendment

Article 18b

Relations with the Brussels I Regulation

With the exception of Article 18a of this Directive, this Directive shall not affect the application of the Brussels I Regulation.

Amendment 76

Proposal for a directive Article 18 c (new)

Text proposed by the Commission

Amendment

Article 18c

Applicable law for publications as an act of public participation

In claims regarding a publication as an act of public participation, the applicable law shall be the law of the place to which that publication is directed to. In the event of it not being possible to identify the place to which the publication is directed, the applicable law shall be the law of the place of editorial control or of the relevant editorial activity with regard to the act of public participation.

Amendment 77

Proposal for a directive Article 18 d (new)

Text proposed by the Commission

Amendment

Article 18d

Relations with the Rome II Regulation

With the exception of Article 18c of this Directive, this Directive shall not affect the application of the Rome II Regulation.

Amendment 78

Proposal for a directive Chapter V b (new)

Text proposed by the Commission

Amendment

Chapter Vb

Other provisions

Amendment 79

Proposal for a directive Article 18 e (new)

Text proposed by the Commission

Amendment

Article 18e

Union register

The Commission shall take appropriate measures to establish a publicly accessible Union register, on the basis of the information provided in accordance with Article 16a, of relevant court decisions falling within the scope of this Directive, in accordance with Union rules on the protection of personal data.

Amendment 80

Proposal for a directive Article 18 f (new)

Text proposed by the Commission

Amendment

Article 18f

Awareness-raising

Member States shall take appropriate action, including via electronic means, aimed at raising awareness about strategic lawsuits against public participation and the procedural safeguards set out in this Directive against them. Such action may include information and awareness-raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders.

Amendment 81

Proposal for a directive Article 18 g (new)

Text proposed by the Commission

Amendment

Article 18g

One-stop shop

Member States shall, with the support of the Commission, take appropriate measures to establish a 'one-stop shop' comprising dedicated national networks of specialised lawyers, legal practitioners and psychologists, which targets of SLAPPs can contact, and through which they can receive guidance and easy access to information on, and protection against SLAPPs, including regarding legal aid, financial and psychological support.

Amendment 82

Proposal for a directive Article 18 h (new)

Text proposed by the Commission

Amendment

Article 18h

Training of practitioners

- 1. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of strategic lawsuits against public participation and the procedural safeguards against them provided for in this Directive.***
- 2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges make available both general and specialist training to increase the awareness of judges of the needs of natural or legal persons engaging in public participation.***
- 3. Through their public services or by funding SLAPP support organisations, Member States shall encourage initiatives enabling those providing support to those targeted by manifestly unfounded or abusive court proceedings against public participation to receive adequate training.***

Amendment 83

Proposal for a directive Article 18 i (new)

Text proposed by the Commission

Amendment

Article 18i

Cooperation and coordination of services

Member States shall take appropriate action to facilitate cooperation between Member States to improve the access of those targeted by manifestly unfounded or abusive court proceedings against public participation to information on procedural safeguards provided for in this Directive and under national law. Such cooperation shall be aimed at least at:

(a) the exchange of current practices; and

(b) the provision of assistance to European networks working on matters directly relevant to those targeted by manifestly unfounded or abusive court proceedings against public participation.

Amendment 84

**Proposal for a directive
Article 18 j (new)**

Text proposed by the Commission

Amendment

Article 18j

Deontological rules for legal professionals

Member States shall, with due respect for the independence of the legal profession, encourage the adoption by professional associations of deontological rules that guide the conduct of legal professionals to discourage the taking of abusive lawsuits against public participation, and where appropriate, considering measures to address any violation of those rules.

Amendment 85

Proposal for a directive
Article 18 k (new)

Text proposed by the Commission

Amendment

Article 18k

Data collection

- 1. Member States shall, taking into account their institutional arrangements on judicial statistics, entrust one or more authorities to be responsible to collect and aggregate, in full respect of data protection requirements, data on abusive court proceedings against public participation initiated in their jurisdiction.**
- 2. Data referred to in paragraph 1 shall include, in particular, the following criteria:**
 - (a) the number of abusive court proceedings against public participation cases, initiated in the relevant year;**
 - (b) the number of abusive court proceedings against public participation cases dismissed early on account of relying on fully or partially unfounded claims;**
 - (c) the number of court proceedings, classified by type of defendant (e.g. journalist, human rights defender, media organisation);**
 - (d) the number of court proceedings, classified by type of plaintiff (e.g. politician, private person, company, whether the plaintiff is a foreign entity);**
 - (e) figures about acts of public participation on account of which court proceedings were launched;**
 - (f) figures on the estimated amount of initial damages requested by plaintiffs;**
 - (g) description of the different legal bases relied on by plaintiffs and related figures;**
 - (h) figures on the length of the**

proceedings, including all instances;

(i) figures on cross-border elements;

(j) as available, other data including on judicial costs of proceedings and, as relevant and appropriate, relevant figures on the historical backgrounds of cases;

(k) the type of claim issued on the basis of this Directive and, where appropriate, the Commission Recommendation that complements it.

Amendment 86

Proposal for a directive

Article 20 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall provide the Commission with all relevant information regarding the application of this Directive, ***in particular available data showing how those targeted by court proceedings against public participation have used the safeguards provided for in this Directive, by [3 years from the date of transposition]***. On the basis of the information provided, the Commission shall by [4 years from the date of transposition] ***and every five years thereafter*** 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 ***while taking account of the national context in each Member State, including the implementation of the Commission Recommendation***. If necessary, the report shall be accompanied by proposals to amend this Directive. ***Those reports shall be made public.***

Amendment 87

Proposal for a directive

Article 21 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**1** 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.

Amendment 88

Proposal for a directive

Article 21 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall apply this directive also to cases pending before a national court at the time of entry into force of the national rules transposing this Directive.

24.5.2023

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Legal Affairs

on the 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”)
(COM(2022)0177 – C9-0161/2022 – 2022/0117(COD))

Rapporteur for opinion (*): Ramona Strugariu

(*) Associated committee – Rule 57 of the Rules of Procedure

SHORT JUSTIFICATION

Strategic lawsuits against public participation (SLAPPs) are not a new problem to the European Union. The occurrence of such lawsuits has been on a constant rise in Europe, as documented by several independent organisations monitoring the phenomenon. Research and awareness on the matter grew higher following the assassination of the Maltese investigative journalist Daphne Caruana Galizia, in October 2017. At the time of her death, Daphne Caruana Galizia had 48 such lawsuits intended against her. These abusive proceedings continued even after her death, when they were passed on to her family, causing enormous financial and psychological burdens to their targets.

Research done by the Coalition Against SLAPPs in Europe (CASE) has highlighted the sustained increase in the number of SLAPPs since 2016, with figures increasing by over 400 % in 2021. The CASE research underlines the scale of the problem highlighting that in Croatia alone, by April 2021, they had identified nearly 1000 active lawsuits against media. The research presented various examples from different Member States such as Poland, France, Italy, Malta or Slovenia, underlining the European dimension of the issue and the need for a common European solution.

SLAPPs may be either fully or partially unfounded claims. However, the two common points designating SLAPPs are the abusive use of the judicial process and their use in relation to public participation. SLAPPs are therefore brought for purposes other than genuinely asserting, vindicating or exercising a right and rather aim to prevent, restrict or penalise public participation. Through the abusive use of the judicial system, SLAPPs not only produce significant financial and psychological damage to their victims, but also restrict access to justice to other citizens, by overburdening the judicial system. Such claims are often characterised by an imbalance of power, but not always. The existence of multiple proceedings, the disproportionate nature of the claim, as well as the use of dilatory and vexatious tactics are further indications of the abusive nature of SLAPPs. The approach chosen is to create a clear definition that includes both manifestly unfounded claims as well as

claims that hold some legal merits, but which entail the aforementioned characteristics and lead to an abuse of rights.

The victims of SLAPPs cover a wide variety of subjects. Victims may be both natural or legal persons, ranging from journalists and media outlets, to activists, editors, human rights defenders and even single private individuals. The common point of these categories is their engagement in public participation. SLAPPs may be used directly or indirectly against anyone engaged in public participation and may also target subjects involved in preparatory or supporting activities thereof. This Directive must offer the appropriate protection for all such categories.

In order to address the issue in an efficient and comprehensive manner, the definition of public participation must also be broadened, as to include activities carried out in the exercise of various rights, besides that of freedom of expression and information. Practical situations have demonstrated that the definition should include a non-exhaustive list, covering among others the freedoms of association and assembly, as well as academic freedoms. Given the high number of SLAPPs against journalists and media workers, it is essential that media pluralism and media freedom are covered by the definition of what constitutes a matter of public interest linked to the engagement in public participation.

In order for this Directive to produce the desired effect of protecting those engaging in public participation from abusive litigation, its provisions must outline several procedural safeguards, including an effective early dismissal mechanism, available either ex officio or at the application of the defendant. The admissibility of an early dismissal mechanism cannot be subject to a higher threshold than that of other procedural safeguards. The Directive must not discriminate between different categories of SLAPPs. To achieve this, the mechanism shall be broadened and made accessible to all victims of SLAPPs. The proposed approach with regard to procedural safeguards, and to the early dismissal mechanism in particular, is to abandon the Commission dichotomy between manifestly unfounded and abusive cases.

For the purposes of an effective early dismissal mechanism, the burden of proof for the court assessment on the matter shall lie with the claimant. The proposed approach is to ask the claimant to only establish a prima facie case as to each element of the cause of action, where it is satisfied that the claim is not abusive. This threshold balances the rights of the defendant, with that of access to justice on the side of the claimant, given the abandonment of the initial availability of the early dismissal mechanism only for manifestly unfounded cases.

The Commission proposal is an excellent first step towards ending abusive litigation against public participation and comes at a time when statistics highlighted the need for a common European solution. The proposal would however only address a small part of the problem, as Union level competence is limited on matters of procedural law. It is therefore essential that further measures are taken by the Member States complementing those taken at Union level. Upon entry into force of this Directive, Member States should not limit the extension of these provisions only to cross border cases in matters of civil and commercial law, but also extend them to domestic cases and to cases governed by criminal law. At the same time, following the period of review, the Commission should also take into consideration the possibility of tackling criminal cases of SLAPPs, through the appropriate legal measures.

The implementation of the recommendation accompanying this legislative proposal is also

essential for its effectiveness. In this regard, Member States should also consider introducing dedicated rules governing the ethic codes of lawyers and other legal practitioners, as to sanction the participation in initiating SLAPPs or disguising them as founded claims.

Finally, as another step forward, the Commission should review the Brussels Ia and RomeII Regulations, in order to address any other potential instances of forum shopping, not covered by this Directive.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Title

Text proposed by the Commission

Amendment

Proposal for a

Proposal for a

DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

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”)

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

Amendment 2

Proposal for a directive

Citation 2 a (new)

Text proposed by the Commission

Amendment

*Having regard to the opinion of the
European Economic and Social
Committee,*

Amendment 3

Proposal for a directive

Recital 2

Text proposed by the Commission

Amendment

(2) Article 10(3) of the Treaty on
European Union states that every Union

(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).

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), ***freedom of assembly and association (Article 12), freedom of the arts and sciences (Article 13), and the right to an effective remedy and to a fair trial (Article 47). Article 12 of the Charter explicitly guarantees the right of everyone to form and to join trade unions for the protection of his or her interests, which is further consolidated in Article 28 of the Charter, guaranteeing the right of collective bargaining and action.***

Amendment 4
Proposal for a directive
Recital 3

Text proposed by the Commission

(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”).

Amendment

(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”). ***The right to freedom of expression has consistently been regarded by the ECtHR as one of the ‘essential foundations’ of a democratic society and both the Charter and the ECHR provide for a very wide right to express oneself freely.***

Amendment 5
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) As recognised by consistent jurisprudence of the ECtHR in relation to the interpretation of relevant provisions of the ECHR, in the light of which the Charter is to be interpreted and applied pursuant to its Article 52(3), the right to freedom of expression and information is closely interlinked with the exercise of other rights and freedoms, including the right to freedom of assembly and of association and the freedom of the arts and sciences, including academic freedom. The ECHR also imposes a positive obligation on contracting states to safeguard the freedom and pluralism of the media and to create a favourable environment for participation in the public debate.

Amendment 6
Proposal for a directive
Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) The right to freedom of expression is a fundamental right that is to be exercised within the framework of ‘the balancing of rights’ principle, as prescribed by the case-law of the ECtHR and in compliance with Article 54 of the Charter.

Amendment 7
Proposal for a directive
Recital 4

Text proposed by the Commission

(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’).

Amendment

(4) The purpose of this Directive is to provide ***minimum rules at Union level in order to ensure the*** protection *of* natural *or* legal persons ***engaging*** in public participation on matters of public interest, in particular journalists, ***media outlets/organizations, publishers*** and human rights defenders, ***including civil society, non-governmental organisations and trade unions, as well as researchers, academics or artists, human rights, environmental, women's and LGBTIQ+ rights defenders, activists, trade unions, bloggers, whistleblowers or political opposition***, against court proceedings, which are initiated against them, ***as well as the threats thereof***, to deter them from public participation (commonly referred to as strategic lawsuits against public participation or ‘SLAPPs’).

Amendment 8
Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Natural and legal persons who engage in public participation play an important role in upholding public debate, fundamental rights and democratic values, social inclusion, environmental protection and the rule of law, as well as strengthening democracy, gender equality, media freedom and pluralism in the Union.

Amendment 9
Proposal for a directive
Recital 5

Text proposed by the Commission

(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.

Amendment

(5) Journalists play an important role in facilitating public debate and in the imparting and reception of information, opinions and ideas. ***Independent, impartial, professional and responsible journalism, as well as access to pluralistic information, are key pillars of democracy.*** It is essential that **journalists** are afforded the necessary space to contribute to an open, free and fair debate and to **report independently of any pressure, all of which is essential to countering** disinformation, information manipulation and interference. Journalists should be able to conduct their activities effectively **and without fear** to ensure that citizens have access to a plurality of views in European democracies. ***Nevertheless, journalists face an increasingly difficult environment for exercising their profession, in which SLAPPs, together with commercial and political pressure, heavy workloads, career precarity or self-censorship pose a significant threat to the public access to information.***

Amendment 10
Proposal for a directive
Recital 6

Text proposed by the Commission

(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.

Amendment

(6) Investigative journalists **and media organisations** in particular play a key role in **uncovering inter alia**, organised crime, **abuse of power**, corruption, **malpractice, nepotism, revolving doors situations, fundamental rights violations and violent** extremism. Their work carries particularly high risks and they are experiencing a growing number of attacks, **killings, threats, intimidation** and harassment. A robust system of safeguards **and protection, including protection of their physical safety and life and investigation**

*of assassinations against them, are needed to enable **investigative journalists** to fulfil their crucial role as watchdogs on matters of public interest, **without fear of punishment for searching for information and delivering it to the public.***

Amendment 11
Proposal for a directive
Recital 7

Text proposed by the Commission

(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.

Amendment

(7) Human rights defenders also play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection, **gender equality** and the rule of law. They should be able to participate actively in public life, **ensure accountability** and make their voice heard on policy matters and in decision-making processes without fear of intimidation. Human rights defenders refer to individuals, **groups**, or organisations engaged in defending fundamental rights and a variety of other rights, such as **civil, political, economic, social, cultural**, environmental and climate rights, women's rights, LGBTIQ rights, the rights of the people with a minority racial or ethnic background, labour rights, **trade union rights** or religious freedoms. Other participants in public debate, such as academics, researchers, **artists, whistleblowers and political opposition, as well as individual persons**, also deserve adequate protection, **as they too are targeted by SLAPPs.**

Amendment 12
Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Academics and researchers, exercising both their right and obligation to express themselves within their area of expertise, contribute fundamentally to the public discourse and the dissemination of knowledge, and ensure that the democratic debate can happen on an informed basis. The use of legal instruments for intimidation purposes attempting to prevent academics and researchers from communicating on matters related to their scientific activities is a direct violation of academic freedom and jeopardises the crucial role of scholars in all areas of their work, including in combatting disinformation and misinformation.

**Amendment 13
Proposal for a directive
Recital 7 b (new)**

Text proposed by the Commission

Amendment

(7b) Environmental defenders also play a key role to protect fundamental rights and to reach the environmental objectives set by the European Union, and must in no way be persecuted or harassed for their involvement in activities to protect human rights, environmental and climate rights. In recent years, environmental defenders have been subjected to ever increasing incidences of killings, threats, harassment, intimidation, smear campaigns, criminalisation and judicial harassment.

**Amendment 14
Proposal for a directive
Recital 7 c (new)**

(7c) Women's and LGBTIQ+ rights defenders also play an instrumental role in promoting and defending gender equality as well as providing support and protection to victims of gender-based violence. Women's rights and LGBTIQ+ rights defenders and organisations are increasingly under attack and face threats, including to their lives, and violence that lead to self-censorship. Over the years, SLAPPs have increasingly been used to criminalise solidarity, as well as against activists defending women's rights, gender equality and LGBTIQ+ rights, in order to hinder progress in achieving gender equality, increasingly questioning their role as public watchdogs and contributing to the shrinking space for civil society in the Union.

Amendment 15
Proposal for a directive
Recital 9

(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.

(9) To foster this environment, it is important to protect ***natural or legal persons who engage in public participation, in particular*** journalists, ***whistleblowers, activists, academics, researchers, artists*** and human rights defenders, ***including civil society organisations and trade unions*** from court proceedings against public participation. Such court proceedings are not initiated for the purpose of access to justice, ***in order to genuinely assert, vindicate or exercise a right, but to prevent, restrict or penalise public participation, ultimately seeking to silence public debate and prevent investigation and reporting on breaches of Union and national law, corruption or other abusive practices. Such practices***

often use harassment and intimidation.

Amendment 16
Proposal for a directive
Recital 10

Text proposed by the Commission

(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.

Amendment

(10) SLAPPs are typically initiated by powerful ***individuals or*** entities, for example lobby groups, corporations, ***public officials, publicly controlled entities and authorities, including politicians and judicial authorities in an attempt to silence public debate***. ***SLAPP victims can be sued for expressing critical views on the behaviour or denouncing wrongdoing, and*** often involve an imbalance of power between the parties, with the claimant having a more powerful financial or political position than the defendant. ***An imbalance of power is a significant and reoccurring*** component of such cases, ***but may be absent in some cases which fulfil the SLAPP criteria, if other components characterising a SLAPP are present***. ***Cases where an imbalance of power is not present should be interpreted cautiously, in order to avoid SLAPP allegations being vexatiously levelled at NGOs, human rights defenders, activists, journalists and others who turn to the courts in good faith to defend themselves against defamatory comments by powerful actors***. Where present, an imbalance of power significantly increases the harmful effects as well as the chilling effects of court proceedings against public participation.

Amendment 17
Proposal for a directive
Recital 11

Text proposed by the Commission

(11) Court proceedings against public

Amendment

(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.

participation may have an adverse impact on the credibility and reputation of **natural or legal persons engaging in public participation** and exhaust their financial and other resources, **as well as cause them psychological harm**. 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, **whistleblowers, activists, academics, researchers, artists** and human rights defenders, **including civil society, non-governmental organisations and trade unions engaging in public participation**. 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.

Amendment 18
Proposal for a directive
Recital 12

Text proposed by the Commission

(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.

Amendment

(12) Those targeted by court proceedings against public participation may face multiple cases simultaneously, **which can be civil, administrative or criminal or a combination of those**, sometimes initiated in several jurisdictions. **Reportedly, most cases of abusive court proceedings against public participation are criminal and domestic cases**. 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. ***The length of procedures, the financial pressure and the threat of sanctions, in particular criminal sanctions, constitute powerful tools to intimidate and silence critical voices.*** Such practices also place unnecessary and harmful burdens on national court systems ***and lead to a misuse of their resources.***

Amendment 19
Proposal for a directive
Recital 13

Text proposed by the Commission

(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.

Amendment

(13) The safeguards provided in this Directive should apply to any natural or legal person on account of their ***direct or indirect*** 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 ***family members, media outlets***, internet providers, publishing houses or print shops, which face or are threatened with court proceedings for ***assisting***, providing ***support or*** services to the person targeted with court proceedings.

Amendment 20
Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) This Directive also aims at discouraging the abusive use of pre-trial procedures, such as warning letters and cease-and-desist declarations that are used to silence natural and legal persons engaging in public participation. By

giving natural and legal persons engaging in public participation the tools to fight abusive claims in court effectively, the Directive also helps to prevent such intimidation tactics.

Amendment 21
Proposal for a directive
Recital 14

Text proposed by the Commission

(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.

Amendment

(14) This Directive should apply to any type of legal claim or action of a civil or commercial nature with cross-border implications, ***including claims pending before a national court at the time of its entry into force, irrespective of*** whatever the nature of the court or tribunal. ***Court proceedings under this Directive entail all proceedings before a court or tribunal in civil matters, including claims in expedite procedures, such as injunctions. It also*** includes civil claims brought in criminal proceedings, ***as they are in essence civil, not criminal claims***. It also includes interim and precautionary measures, counteractions or other particular type of remedies available under other instruments.

Amendment 22
Proposal for a directive
Recital 16

Text proposed by the Commission

(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

Amendment

(16) Public participation should mean any statement or activity, by a natural or legal person expressed or carried out in ***the*** exercise of ***fundamental and human rights and freedoms such as*** 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 ***content, news and current affairs***, political, scientific,

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.***

Amendment 23
Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

academic, artistic, commentary or satirical communications, publications or works, and any preparatory activities directly linked thereto. ***Future public interest refers to the fact that a matter may not yet be of public interest, but may become so once the public becomes aware of it, for example through a publication or individual complaint. Public participation*** can also include activities related to the exercise of ***academic and artistic freedom***, 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.

Amendment

(16a) Public participation should also include preparatory, supporting or assisting activities that have a direct and inherent link to the statement or activity in question. Such activities should directly concern a specific act of public participation, including those based on a contractual link between the person engaging in public participation and the person providing the preparatory, supporting or assisting activity. In addition, public participation 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. Bringing claims not against the person engaging in public participation, but against a media organization, such as an internet platform publishing their work or against the company printing a text or a shop selling the text, can be an effective way of silencing public participation, as without such services opinions cannot be published and thus cannot influence public debate.

Amendment 24
Proposal for a directive
Recital 17

Text proposed by the Commission

(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.***

Amendment

(17) Public participation should not normally cover commercial advertisement and marketing activity.

Amendment 25
Proposal for a directive
Recital 18

Text proposed by the Commission

(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

Amendment

(18) The notion of a matter of public interest should include also quality, safety or other relevant aspects of goods, products or services, ***including the conditions under which these are produced and provided,*** where such matters are relevant to public health, safety, the environment, climate, ***rule of law*** or enjoyment of fundamental rights, ***including labour rights, media freedom and pluralism, non-discrimination, gender equality and protection from gender-based violence.*** A

or service which fails to comply with environmental or safety standards.

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, ***labour rights, consumer rights or human rights, including the principle of non-discrimination.***

Amendment 26
Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Allegations of corruption, fraud, money laundering, embezzlement, extortion, coercion, sexual harassment and gender based violence or other forms of intimidation and criminality including environmental crime are also matters of public interest. Activities aimed to protect the values enshrined in Article 2 TEU, to provide or facilitate public access to information with a view to fighting disinformation, as well as scientific and research activities, also qualify as matters of public interest.

Amendment 27
Proposal for a directive
Recital 20

Text proposed by the Commission

Amendment

(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,

(20) Abusive court proceedings are characterized by their main purpose to prevent, restrict or penalize public participation or aim to achieve a chilling effect on public participation in the matter at stake; they thus constitute an abuse of substantive or procedural laws. General principles of law state that rights may not

combined with various forms of intimidation, harassment or threats.

be exercised in an abusive way as established i.e. in Article 54 Charter and Article 17 ECHR. The abusive nature of a court proceeding is to be deducted from a totality of the circumstances of the lawsuit. Abusive court proceedings typically involve litigation tactics used in bad faith such as *exaggerated or excessive damage claims, requesting disproportionate prior restraint measures, delaying proceedings, initiating multiple proceedings on similar matters*, causing disproportionate costs to the defendant in the proceedings or forum shopping. *The past conduct of the claimant in particular, any history of legal intimidation should also be considered when determining whether the lawsuits are abusive in nature. A previous early dismissal of a similar claim as abusive should be a prima facie indicator for abusiveness.* These tactics are used by the claimant for other purposes than gaining access to justice *in order to genuinely assert, vindicate or exercise a right, leading to an abuse of substantive or procedural laws.* Such tactics are often, although not always, combined with various forms of intimidation, harassment or threats, *such as the threat of using SLAPPs. In case of death of the defendant such abusive lawsuits might even be continued against their heirs.*

Amendment 28
Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) Another reoccurring characteristic of SLAPPs is the exploitation of preponderance in terms of economic power, legal resources or political influence by the claimant in order to restrict the public participation of the defendant. This results in an imbalance of power, which causes particular concern if

the abusive lawsuits are funded directly or indirectly from the state budgets and are combined with other indirect and direct state measures against independent media outlets, independent journalism and civil society. Such an imbalance of power might be absent in some cases which fulfil other SLAPPs criteria.

Amendment 29
Proposal for a directive
Recital 23

Text proposed by the Commission

(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.

Amendment

(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 ***abusive*** 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. ***Court proceedings brought against natural or legal persons on account of their engagement in public participation should be dealt with in a swift and effective manner, taking into account the circumstances of the case, and the right to an effective remedy and the right to a fair trial.***

Amendment 30
Proposal for a directive
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Any natural or legal person safeguarding or promoting the rights of persons engaging in public participation or otherwise bearing an interest in the defence of the public participation activity targeted by a SLAPP should have the opportunity to take part in those

proceedings or to provide information, either in support of the defendant or on their behalf with the defendant's approval. Such possibility of legal representation should be without prejudice to the right and competences of trade unions and workers' representatives to engage on behalf of or in support of workers in judicial proceedings, in accordance with other Union and national rules.

Amendment 31
Proposal for a directive
Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) Proceedings against public participation expose those targeted to high financial and psychological harm, while confronting them with the need to establish often hard to prove facts like the abusive nature of a lawsuit court proceeding. In such situations, the defendants should have the right to receive the support necessary to make their case, subject to their prior approval. This includes, but is not limited to, the support and providing of information. The defendant should have the right to seek such support from any natural or legal person with a legitimate interest or expertise in safeguarding or promoting the rights of persons engaging in public participation. This encompasses i.e. journalists and academics as well as non-governmental organisations, Union bodies or agencies, international organisations and their bodies, professional and representative associations, trade unions and other collective bodies acting in the interest of the defendant or with particular knowledge of the claimant, particularly of their engagement against public participation.

Amendment 32
Proposal for a directive
Recital 30

Text proposed by the Commission

(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.

Amendment 33
Proposal for a directive
Recital 30 a (new)

Text proposed by the Commission

Amendment

(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 ***abusive***. 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 needs to ***establish*** that the claim is not ***abusive***, in order to avoid an early dismissal, ***as well as that, when applying for dismissal, the defendant should provide the court with the elements indicating abusiveness.***

(30a) Early dismissal of fully or partially unfounded claims does not constitute an undue infringement of the right of access to justice. Under this Directive, Member States should empower their tribunals and courts with the possibility to adopt early decisions to dismiss, but such decisions should be adopted by the judge on a case-by-case basis, in claims where the aim of the claimant is not to genuinely assert, vindicate or exercise a right. Moreover, claimants should always be entitled to lodge an appeal against the early decision to dismiss.

Amendment 34
Proposal for a directive
Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) The provisions and safeguards of this Directive apply, in accordance with the interpretation^{1a} by the Court of Justice of the European Union of the principle ‘tempus regit actum’, to all pending court proceedings against public participation on the date of entry into force of the national law implementing the Directive and thereafter.

^{1a} Case No. C-610/10, European Commission v Kingdom of Spain

Amendment 35
Proposal for a directive
Recital 35 a (new)

Text proposed by the Commission

Amendment

(35a) This Directive should be without prejudice to existing rights of representation and intervention as guaranteed by other Union or national law.

Amendment 36
Proposal for a directive
Recital 36

Text proposed by the Commission

Amendment

(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

(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.

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. *When transposing this Directive, Member States should also ensure the implementation of the Commission's recommendation. In this regard, Member States should pay particular attention to the implementation of the recommendations concerning, in particular, the inclusion of safeguards similar to those provided for by the present Directive for domestic cases not covered by the scope of this Directive, the provision of legal assistance to defendants in an affordable and easily accessible manner, and ensure the inclusion in their national transposition laws of targeted provisions to that effect.*

Amendment 37
Proposal for a directive
Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) This Directive provides support and preventive measures, including the establishment of national funds by Member States, operated by an independent body, such as civil society organisations, and with support from the Commission, non-financial support mechanisms such as the provision of legal aid and psychological support, as well as training, awareness-raising and data collection measures. It also seeks to ensure the collection of data by establishing common criteria at Union level. National focal points, coordinated by the Commission and operated by independent civil society organisations managing Union funding, should be established to gather and share information on all organisations that provide guidance and support for targets

of abusive court proceedings against public participation. Such organisations might include associations of legal professionals, media and press councils, umbrella associations for human rights defenders, associations at Union and national level, law firms defending targets of abusive court proceedings against public participation pro bono, legal clinics of universities and other non-governmental organisations.

Amendment 38
Proposal for a directive
Recital 36 b (new)

Text proposed by the Commission

Amendment

(36b) This directive is not intended to solve all SLAPPs being deployed against persons engaging in public participation. Particular focus should be drawn in the future to the abuse of the criminal law system as well as the administrative law system. In particular, the offence of defamation posed particular dangers of being misused as basis for SLAPPs. The Commission and Member States should work on solutions to address these dangers.

Amendment 39
Proposal for a directive
Recital 36 c (new)

Text proposed by the Commission

Amendment

(36c) Training for journalists, other media professionals and human rights defenders should strengthen their capacity to deal with abusive court proceedings against public participation. It should focus on recognising such court proceedings, how to manage being targeted by them and inform them of their rights and obligations in order for them to

be able to take the necessary steps to protect themselves against such proceedings. Training should also be provided to legal professionals in order to increase awareness of abusive court proceedings and be able to detect them at a very early stage.

Amendment 40
Proposal for a directive
Recital 36 d (new)

Text proposed by the Commission

Amendment

(36d) Member States should establish dedicated national funds, operated by an independent body, such as civil society organisations, and with support from the Commission, to support and compensate victims of abusive court proceedings. The national funds should be partially funded by penalties. Resources provided through the national funds should also be distributed to organisations providing guidance and support for targets of SLAPPs in order to ensure that such organisations are provided with sufficient resources in order to perform their tasks adequately.

Amendment 41
Proposal for a directive
Recital 36 e (new)

Text proposed by the Commission

Amendment

(36e) The collection of data is paramount to document cases of abusive court proceedings and to provide solutions in order to prevent them. This Directive should establish common criteria to standardise the data collection procedures in Member States and ensure that comparable data is collected. Such data should include:

- (i) *the number of abusive court proceedings against public participation initiated in the relevant year;*
- (ii) *the number of abusive court proceedings against public participation dismissed early as relying on fully or partially unfounded claims in the relevant year, starting from 2022, both dismissed on merits and for procedural reasons;*
- (iii) *the number of court proceedings, classified by type of defendant (e.g. journalist, human rights defender, press outlet);*
- (iv) *the number of court proceedings, classified by type of claimant (e.g. politician, private person, company, whether the claimant is a foreign entity);*
- (v) *figures about acts of public participation on the account of which court proceedings were launched;*
- (vi) *figures on the estimated amount of initial damages requested by claimants;*
- (vii) *description of the different legal bases employed by claimants and related figures;*
- (viii) *figures on the length of the proceedings, including all instances;*
- (ix) *figures on cross-border elements;*
- (x) *as available, other data including on judicial costs of proceedings and, as relevant and appropriate, relevant figures on historical backgrounds of cases;*
- (xi) *the type of claim issued on the basis of this Directive and the Recommendation accompanying it.*

Amendment 42
Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

This Directive provides safeguards against

Amendment

This Directive provides ***procedural and***

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.

legal safeguards against abusive court proceedings, ***or threats of initiating legal action***, in civil matters with cross-border implications brought ***directly or indirectly*** against natural and ***or*** legal persons, ***such as*** journalists, ***media outlets*** and rights defenders, ***in particular, human rights, environmental, women's and LGBTIQ+ rights defenders, as well as civil society organizations, NGOs, activists, trade unions, artists, researchers, academics, bloggers, whistleblowers or political opposition***, on account of their engagement in public participation, ***including online***.

Amendment 43
Proposal for a directive
Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) This Directive sets minimum standards of protection of natural and legal persons who engage in public participation, in the field of civil court proceedings. The implementation of this Directive shall in no circumstances constitute grounds for a reduction in the level of safeguards already afforded by Member States in the matters covered by this Directive.

Amendment 44
Proposal for a directive
Article 3 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

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,

1. ‘public participation’ means any statement or activity by a natural or legal person, expressed or carried out in the exercise of ***fundamental rights and freedoms such as*** freedom of expression and information on a matter of public interest, ***freedom of association and assembly, freedom of press, academic and***

petitions, administrative or judicial claims and participation in public hearings;

artistic freedom, freedom of science and culture, the right of collective bargaining and action, the right to an effective remedy or the right to good administration. This includes any activity regardless of the nature, medium or format, which serves the exercise of public scrutiny, disclosure, dissemination or promotion of information to the public such as complaints, petitions, administrative or judicial claims and participation in public hearings, as well as any forms of creation, exhibition, advertisement or other promotion of journalistic, political, scientific, academic, artistic, commentary or satirical communications, publications or works. This shall also include any supporting or preparatory activities thereof, in particular the work of media organisations, such as the provision by natural or legal persons, either on a professional or personal basis, of support to another person for purposes directly linked to public participation on a matter of public interest,

Amendment 45

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point a

Text proposed by the Commission

(a) public health, safety, the environment, climate or enjoyment of fundamental rights;

Amendment

(a) public health, safety, **media freedom and pluralism**, the environment, climate or enjoyment of fundamental **and human** rights, **including labour rights, non-discrimination, gender equality and gender-based violence**;

Amendment 46

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point c

Text proposed by the Commission

(c) matters under public consideration or **review** by a legislative, executive, or judicial body, or any other **public** official proceedings;

Amendment

(c) matters under public consideration or ***under consideration*** by a legislative, executive, or judicial body, or any other official proceedings ***as well as actions or failures to act by public authorities***;

Amendment 47

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point d

Text proposed by the Commission

(d) allegations of corruption, fraud ***or criminality***;

Amendment

(d) allegations of corruption, fraud, ***embezzlement, money laundering, extortion, coercion, sexual harassment and gender based violence, or other forms of intimidation, or any other criminal or administrative offence including environmental crime***;

Amendment 48

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point e

Text proposed by the Commission

(e) activities aimed to ***fight*** disinformation;

Amendment

(e) activities aimed to ***protect the values enshrined in Article 2 TEU, the principle of non-interference in democratic processes, and to provide or facilitate public access to information with a view to fighting*** disinformation;

Amendment 49

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) ***academic, scientific and research activities***;

Amendment 50
Proposal for a directive
Article 3 – paragraph 1 – point 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) artistic activities;

Amendment 51
Proposal for a directive
Article 3 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

Amendment

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:

3. ‘abusive court proceedings against public participation’ mean court proceedings brought in relation to public participation that ***make use of the judicial process for purposes other than genuinely asserting, vindicating or exercising a right*** and have as their main purpose to prevent, restrict or penalize public participation. Indications of such a purpose can be:

Amendment 52
Proposal for a directive
Article 3 – paragraph 1 – point 3 – point - a (new)

Text proposed by the Commission

Amendment

(- a) the extent to which the claim is manifestly unfounded;

Amendment 53
Proposal for a directive
Article 3 – paragraph 1 – point 3 – point b

Text proposed by the Commission

Amendment

(b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;

deleted

Amendment 54
Proposal for a directive
Article 3 – paragraph 1 – point 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the use of litigation tactics that inflict unreasonable costs on the defendant, including as regards the choice of jurisdiction, or the use of dilatory motions;

Amendment 55
Proposal for a directive
Article 3 – paragraph 1 – point 3 – point c b (new)

Text proposed by the Commission

Amendment

(cb) the exploitation of preponderance in terms of economic power, legal resources or political or social influence in order to restrict the public participation of the defendant, resulting in an imbalance of power between the two parties;

Amendment 56
Proposal for a directive
Article 3 – paragraph 1 – point 3 – point c c (new)

Text proposed by the Commission

Amendment

(cc) the existence of multiple ongoing or previous proceedings initiated by the claimant or associated parties in relation to matters of public participation;

Amendment 57
Proposal for a directive
Article 3 – paragraph 1 – point 3 – point c d (new)

Text proposed by the Commission

Amendment

(cd) a previous early dismissal of a similar claim as abusive.

Amendment 58
Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) early dismissal of ***manifestly unfounded*** court proceedings in accordance with Chapter III;

Amendment

(b) early dismissal of ***abusive*** court proceedings in accordance with Chapter III;

Amendment 59
Proposal for a directive
Article 5 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Member States ***shall*** 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. ***Member States shall ensure that the court or tribunal seized of the matter takes measures under Articles 8, 14 and 15 ex officio.***

Amendment 60
Proposal for a directive
Article 5 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall ensure that court proceedings brought against natural or legal persons on account of their engagement in public participation are dealt with in a swift and effective manner, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.

Amendment 61
Proposal for a directive
Article 7 – title

Text proposed by the Commission

Third party intervention

Amendment

Third party intervention ***in support for defendant***

Amendment 62
Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

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***.

Amendment

Member States shall take the necessary measures to ensure that a court or tribunal seised of court proceedings against public participation may accept that ***the European Union Agency for Fundamental Rights, international organisations and their bodies, such as the Council of Europe, non-governmental organisations or collective bodies, such as trade unions or professional organisations***, may take part ***or provide information*** in those proceedings, either in support of the defendant or ***on their behalf with the defendant's approval***.

Amendment 63
Proposal for a directive
Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Third party representation

Member States shall take the necessary measures to ensure that in any proceedings covered under this Directive the defendant has the right to have, subject to her or his request, a body, organisation or association act on her or his behalf.

Amendment 64
Proposal for a directive
Chapter III – title

Text proposed by the Commission

Early dismissal of ***manifestly unfounded*** court proceedings

Amendment

Early dismissal of ***abusive*** court proceedings ***against public participation***

Amendment 65
Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

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***.

Amendment

1. Member States shall empower courts and tribunals to adopt an early decision to dismiss, in full or in part, ***abusive*** court proceedings against public participation as ***defined in Article 3(3)***.

Amendment 66
Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

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.***

Amendment

2. ***The defendant may apply for a dismissal at any stage of the proceedings; where national civil procedural law systems foresee a separate admissibility stage,*** Member States may establish time limits for the exercise of the right to file ***an application for dismissal at that stage of the proceedings.***

Amendment 67
Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to prove that the

Amendment

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*.

claim is not *abusive, as defined in Article 3(3)*;

Amendment 68
Proposal for a directive
Chapter V a (new)

Text proposed by the Commission

Amendment

Chapter Va

SUPPORT MEASURES

Article 18a

National Fund

- 1. Member States shall, with support from the Commission, establish a national fund operated by an independent body, for the compensation of any natural or legal person who has suffered harm as a result of an abusive court proceedings against public participation not covered by already existing national schemes for compensation to victims and to support organizations providing guidance and support for targets of abusive court proceedings against public participation.*
- 2. National funds shall be partially funded by the penalties as provided for in Article 16 of this Directive. Member States shall decide on the amount of the penalties to be allocated to the national funds.*

Article 18b

Non-financial support mechanisms

- 1. Member States shall ensure that non-financial support mechanisms are provided to persons engaging in public participation. Such measures shall include the provision of legal aid and psychological support, as well as information concerning the organisations providing guidance and support for targets of abusive court proceedings against public participation. The support and assistance shall be accessible and free*

of charge.

2. Member States shall establish a national focal point, operated by independent civil society organisations, that gathers and shares information on all organisations that provide guidance and support for targets of abusive court proceedings against public participation.

3. Member States shall facilitate the exchange of information and best practices between organisations that provide guidance and support for targets of abusive court proceedings against public participation.

Amendment 69
Proposal for a directive
Chapter V b (new)

Text proposed by the Commission

Amendment

Chapter Vb

PREVENTIVE MEASURES

Article 18c

Training

1. With due respect for judicial independence, the independence of the legal profession and differences in the organisation of the judiciary across the Union, Member States shall support training opportunities for legal professionals such as judiciary and judicial staff at all court levels, qualified lawyers as well as for potential targets of such court proceedings in order to increase awareness of strategic lawsuits against public participation, the procedural safeguards against them provided for in this Directive, and awareness of the needs of natural or legal persons engaging in public participation.

2. Member States shall ensure that training opportunities are extended to individuals and organisations engaging in

public participation to equip them with specific knowledge in order to recognise and respond accordingly to abusive court proceedings against public participation. Member States shall ensure that abusive court proceedings against public participation are included in particular in the law and journalism curricular.

3. Member States shall receive support from the Commission in facilitating training and the exchange of practices in order to ensure to the extent possible common objectives and methodology at Union level. In this regard, they should ensure the involvement of legal practitioners and their professional associations.

Article 18d

Awareness-raising

1. Member States shall take appropriate action, such as information and awareness-raising campaigns targeting all relevant stakeholders both from the public and private sector and research and education programmes, in order to foster knowledge about strategic lawsuits against public participation and the procedural safeguards set out in this Directive, to raise public awareness and seriously reduce the risk or threat of such lawsuits. Where appropriate, Member States shall act in cooperation with all relevant stakeholders.

2. Member States shall provide support and information on raising awareness activities on existing support structures at Union and national levels, including reference to national focal points that gather and share information on available resources, including on legal assistance and the legal avenues of defence available.

Article 18e

Data collection

1. Member States should, taking into

account their institutional arrangements on judicial statistics, entrust one or more authorities to be responsible to collect and aggregate, in full respect of data protection requirements, data on abusive court proceedings against public participation initiated in their jurisdiction.

2. For the purpose of paragraph 1 of this Article, Member States shall establish a register of court decisions concerning matters governed by this Directive and the Recommendation accompanying it. Such register shall be made publicly accessible free of charge at point of use, and comply with Union and national rules on the protection of personal data.

Amendment 70
Proposal for a directive
Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

Application in time

The provisions of this Directive shall apply to all abusive court proceedings against public participation, as defined in Article 3(3), initiated or continued at the time of the entry into force of the national law implementing this Directive and thereafter.

Amendment 71
Proposal for a directive
Article 20 – paragraph 1

Text proposed by the Commission

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

Amendment

Member States shall provide the Commission with all relevant information regarding the application of this Directive by [3 years from the date of transposition] **and thereafter on an annual basis**. On the basis of the information provided, 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.

Commission shall by [**4** years from the date of transposition] at the latest, submit to the European Parliament and the Council **an annual** 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. ***Those reports shall be made public.***

Amendment 72
Proposal for a directive
Article 20 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission, based on the application of this Directive on SLAPPs in civil claims brought in criminal proceedings and based on other available information, shall assess if further action against SLAPPs in criminal proceedings is necessary.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)
References	COM(2022)0177 – C9-0161/2022 – 2022/0117(COD)
Committee responsible Date announced in plenary	JURI 5.5.2022
Opinion by Date announced in plenary	LIBE 5.5.2022
Associated committees - date announced in plenary	15.12.2022
Rapporteur for the opinion Date appointed	Ramona Strugariu 12.1.2023
Previous rapporteur for the opinion	Anna Júlia Donáth
Discussed in committee	22.3.2023
Date adopted	23.5.2023
Result of final vote	<div style="display: flex; justify-content: space-between;"> +: 51 </div> <div style="display: flex; justify-content: space-between;"> –: 5 </div> <div style="display: flex; justify-content: space-between;"> 0: 4 </div>
Members present for the final vote	Magdalena Adamowicz, Abir Al-Sahlani, Malik Azmani, Pietro Bartolo, Theresa Bielowski, Malin Björk, Vasile Blaga, Karolin Braunsberger-Reinhold, Patrick Breyer, Saskia Bricmont, Annika Bruna, Damien Carême, Clare Daly, Lena Düpont, Lucia Ďuriš Nicholsonová, Laura Ferrara, Nicolaus Fest, Sylvie Guillaume, Andrzej Halicki, Sophia in ‘t Veld, Patryk Jaki, Marina Kaljurand, Assita Kanko, Fabienne Keller, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Javier Moreno Sánchez, Maite Pagazaurtundúa, Emil Radev, Paulo Rangel, Diana Riba i Giner, Isabel Santos, Birgit Sippel, Sara Skyttedal, Vincenzo Sofo, Tineke Strik, Ramona Strugariu, Tomas Tobé, Milan Uhrík, Tom Vandendriessche, Elissavet Vozemberg-Vrionidi, Elena Yoncheva
Substitutes present for the final vote	Susanna Ceccardi, Gwendoline Delbos-Corfield, Loucas Fourlas, José Gusmão, Alessandra Mussolini, Matjaž Nemec, Carina Ohlsson, Thijs Reuten, Paul Tang, Róza Thun und Hohenstein, Loránt Vincze, Tomáš Zdechovský
Substitutes under Rule 209(7) present for the final vote	Marie Dauchy, Vlad Gheorghe

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

51	+
NI	Laura Ferrara
PPE	Magdalena Adamowicz, Vasile Blaga, Karolin Braunsberger-Reinhold, Lena Düpont, Loucas Fourlas, Andrzej Halicki, Jeroen Lenaers, Nuno Melo, Alessandra Mussolini, Emil Radev, Paulo Rangel, Sara Skyttedal, Tomas Tobé, Loránt Vincze, Elissavet Vozemberg-Vrionidi, Tomáš Zdechovský
Renew	Abir Al-Sahlani, Malik Azmani, Lucia Ďuriš Nicholsonová, Vlad Gheorghe, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Maite Pagazaurtundúa, Ramona Strugariu, Róza Thun und Hohenstein
S&D	Pietro Bartolo, Theresa Bielowski, Sylvie Guillaume, Marina Kaljurand, Łukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Matjaž Nemec, Carina Ohlsson, Thijs Reuten, Isabel Santos, Birgit Sippel, Paul Tang, Elena Yoncheva
The Left	Malin Björk, Clare Daly, José Gusmão
Verts/ALE	Patrick Breyer, Saskia Bricmont, Damien Carême, Gwendoline Delbos-Corfield, Alice Kuhnke, Diana Riba i Giner, Tineke Strik

5	-
ECR	Patryk Jaki, Vincenzo Sofo
ID	Susanna Ceccardi, Nicolaus Fest
NI	Milan Uhrík

4	0
ECR	Assita Kanko
ID	Annika Bruna, Marie Dauchy, Tom Vandendriessche

Key to symbols:

+ : in favour

- : against

0 : abstention

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Legal Affairs

on the 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”)
(COM(2022)0177 – C9-0161/2022 – 2022/0117(COD))

Rapporteur for opinion: Stelios Kouloglou

SHORT JUSTIFICATION

On 27 April 2022, the European Commission published its legislative proposal for a directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”).

Overall, the Rapporteur welcomes the proposal and suggests improvements in order to clarify certain provisions, especially those related to the terminology, the definitions, and to the scope of the directive, aiming at strengthening citizen’s EU protection.

The Rapporteur would like to highlight that the so-called SLAPPs – as lawsuits filed with an improper purpose – are abusive by their very nature. If a case is “manifestly unfounded”, this indicates its abusive nature. Since all abusive lawsuits should be filtered out of the court system and made subject to sanctions, the Rapporteur proposes to remove the divide between “manifestly unfounded” and “abusive”, ensuring that all procedural safeguards apply to both, with a special focus on early dismissal, costs security, damage compensation and sanctions. As the commonly used term “Strategic lawsuits against public participation” may appear unclear for the purpose of legislating, given the difficulty of using and defining the term “strategic” in particular in EU civil law systems, the Rapporteur proposes to use the term “abusive lawsuits against public participation” as a catch-all term throughout the text, while nevertheless keeping the established abbreviation “SLAPP” for better communication purposes, to avoid confusion and to keep the links with relevant texts from the Council and the UN.

Furthermore, the Rapporteur believes it is important to highlight the Directive’s broad personal scope, which shall extend to claims brought against any natural or legal person engaging – directly or indirectly – in public participation. The explicit mention of particular categories of SLAPP targets by way of example, e.g. civil society, non-governmental organisations and trade unions, as well as researchers, scientists, academics, artists, whistleblowers and publishers, shall reflect the wide range of actors impacted by this phenomenon across the EU. At the same time, there is a focus on journalists and human rights defenders in certain recitals to keep the initial aim of text, as they are the majority of SLAPPs victims. A special reference is added to reflect the worrying gender-based rise of SLAPPs. It is also proposed to broaden third party legal interventions including professional associations to strengthen the representation of the rights of persons engaging in public participation.

A very important aspect for the Rapporteur is to make sure that the new Directive applies to pending cases, commenced or continued before a national court at the time of its entry into force, as well as to civil claims brought in criminal proceedings, while administrative matters are to be narrowly interpreted to strengthen citizens' protection from claims abusively grounded on provisions of an administrative nature.

Moreover, the Rapporteur proposes to include references to several other rights and freedoms that are inherently linked to the exercise of freedom of expression and information, e.g. the right to freedom of association and assembly as well as to freedom of the arts, culture and science, with a view to anchor the instrument to a comprehensive and rights-based definition of the notion of "public participation" which should be intended as participation in public life and decision-making, but also in the exercise of a watchdog role to promote accountability for activity that is deemed illegal, immoral, illicit, unsafe or fraudulent.

Public participation should clearly include as well artistic, cultural, research and scientific activities, while the digital environment is also included, in order to make sure that protected public participation activities include the right of expression online as well.

Additionally, the Rapporteur believes it is important to ensure a rights-based notion of "matter of public interest". As part of e.g. public health and sustainable consumption, large-scale violations of working conditions or human rights in supply chains may also be of public interest. This shall be made clear so as to ensure that workers or organisations reporting such wrongdoings do not become target of SLAPPs, in line with the Whistle-blower Protection Directive and to support the effective monitoring and enforcement of the pending proposals for an EU Directive on Corporate Sustainability Due Diligence and an EU Regulation on Forced Labour.

Furthermore, the Rapporteur welcomes the Directive's innovative perspective for "cross-border" covering certain domestic cases and suggests that it be broadly interpreted according with its relevance to the concept of the "matter of public interest", instead of mere practical implications for different member states, especially in today's digital world and to strengthen EU safeguards against forum shopping and against SLAPPs from third countries.

A clear burden of proof on the claimant is of absolute importance and therefore, the Rapporteur replaces the "manifestly unfounded" threshold with a requirement for the claimant to establish a "prima facie" case as to each essential element of the cause of action.

Finally, education and awareness raising, as well as a review of deontological standards of legal professionals, are also suggested by the Rapporteur as enablers towards the effective implementation of the Directive.

Notably, Rapporteur's suggestions were drafted after taking due account of input deriving from civil society organisations which include.

- The Coalition against SLAPPs in Europe
- Transparency International
- Civil Liberties Union for Europe
- Committee to Protect Journalists
- Greenpeace International

- the Daphne Caruana Galizia Foundation
- Culture Action Europe
- News Media Europe

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Title

Text proposed by the Commission

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”)

Amendment

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on protecting persons who engage in public
participation from unfounded or abusive
court proceedings (“Strategic lawsuits
against public participation (*SLAPPs*)”)

Amendment 2

Proposal for a directive Recital 2

Text proposed by the Commission

(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).

Amendment

(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), *freedom of assembly and of association (Article 12)* and to an effective remedy and to a fair trial (Article 47).

Amendment 3

Proposal for a directive

Recital 3

Text proposed by the Commission

(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”).

Amendment

(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 ***which is necessary in a democratic society***. 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, ***covering also the protection of the reputation or rights of others and the prevention of disclosure of information received in confidence, such correspondence, having been*** interpreted by the European Court of Human Rights (“ECtHR”). ***The right to freedom of expression and information is connected to other rights and freedoms, including the right to freedom of assembly and of association, as set forth in Article 12 of the Charter, and the freedom of the arts and sciences, including academic freedom, as set forth in Article 13 of the Charter.***

Amendment 4

Proposal for a directive

Recital 4

Text proposed by the Commission

(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

Amendment

(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 ***including online***, in particular journalists and human rights defenders, ***including civil society***,

initiated ***against them to deter*** them from public participation (commonly referred to as strategic lawsuits against public participation or ‘SLAPPs’).

NGOs and trade unions, as well as researchers, academics, students, artists, whistleblowers and publishers of journalistic and artistic works against ***abusive*** court proceedings, which are initiated ***with the purpose of deterring*** them from public participation (commonly referred to as strategic lawsuits against public participation or ‘SLAPPs’), ***and to safeguard the right to an effective remedy and to a fair trial.***

Amendment 5

Proposal for a directive Recital 5

Text proposed by the Commission

(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.

Amendment

(5) ***There is a pressing need to maintain the independence of the media from political and economic pressure, such as the one used through SLAPPs.*** Journalists ***and press publishers*** play an important role in facilitating public debate and in the imparting and reception of information, opinions and ideas. It is essential that they ***conduct their activities according to journalistic standards and charters and*** 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. ***Journalists should be free to criticize without fear of prosecution or infringed right to freedom of expression and be ensured the protection, safety and empowerment.***

Amendment 6

Proposal for a directive Recital 7

Text proposed by the Commission

(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.*

Amendment

(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, ***promote accountability***, 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 ***the rights of migrants, refugees and asylum seekers***, labour ***rights, trade union*** rights or religious freedoms. Other participants in public debate ***online and offline may include*** academics and researchers, ***scientists, educators, artists, cultural workers, social media activists and whistleblowers.***

Amendment 7

**Proposal for a directive
Recital 7 a (new)**

Text proposed by the Commission

Amendment

(7 a) Women, LGBTIQ and gender rights defenders play a crucial role in achieving a gender-equal Europe. They should be able to promote accountability and have their voice heard in any case of gender-based harassment, violence, abuse or abuse of power relations, without suffering a second wave of gender-based harassment as victims of SLAPPs. Therefore, the objectives and provisions of this Directive are linked and should be interpreted towards the highest possible protection of gender-based SLAPP

victims, also along with all relevant EU policies and legislation.

Amendment 8

Proposal for a directive

Recital 7 b (new)

Text proposed by the Commission

Amendment

(7 b) Special attention should be paid to ensure that this directive effectively helps to combat the discrimination that racial, religious and ethnic minorities are often subjected to.

Amendment 9

Proposal for a directive

Recital 8

Text proposed by the Commission

Amendment

(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.

(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, ***objective and unbiased*** 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. ***Therefore, it is crucial to promote and support awareness raising about their rights and freedoms, critical thinking and media literacy including through education and training curricula in the member states, while enabling horizontally all relevant EU policies such as the Digital Education Plan 2021-2027 and the European Education Area. Adequate resources need to be invested to effectively inform citizens of their civic rights to public participation while the sharing of the best practices should be encouraged in EU level. Media literacy***

programmes in specific should be an essential instrument for Member States to protect their citizens against undue interference in the public debate

Amendment 10

Proposal for a directive

Recital 9

Text proposed by the Commission

(9)

Amendment

(9) To foster *a healthy and thriving* environment it is important to protect *all natural and legal persons who engage in public participation, in particular* journalists and human rights defenders *and enable access to reliable information* from court proceedings against public participation. Such court proceedings are not initiated for the purpose of access to justice, but to *exploit procedural instruments in order to* silence public debate typically using harassment and intimidation. *They are restricting investigations and legitimate information towards the public and therefore hindering the role of watchdogs and restraining the health of democracies.*

Amendment 11

Proposal for a directive

Recital 10

Text proposed by the Commission

(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

Amendment

(10) SLAPPs are typically initiated by powerful entities, for example individuals, lobby groups, corporations, *political parties* 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 *does*. Although not being an indispensable component of such cases, where present, an imbalance of power significantly increases the harmful effects *of these proceedings, shrinking the civic*

against public participation.

space for civil society to act and engage in public participation and severely harming democracy. SLAPPs as unfounded or abusive court proceedings can be used in civil procedures, but also in civil claims brought in criminal proceedings, against public participation wishing to silence criticism and prevent public scrutiny to the detriment of a public debate.

Amendment 12

Proposal for a directive Recital 11

Text proposed by the Commission

(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.

Amendment

(11) Court proceedings against public participation may have an adverse impact on the credibility and reputation of **targeted natural or legal persons** 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. **Moreover, court proceedings against public participation are often based on groundless accusations.** The length of procedures and the financial pressure may have a chilling effect on journalists and human rights defenders, **academics, researchers, artists and anyone active in public participation.** The existence of such practices may therefore have a deterrent effect on their work to **silence critical voices, including** self-censorship in anticipation of possible future court proceedings **as not all SLAPPs reach the court and often remain as a threat of a lawsuits**, which leads to the impoverishment of public debate to the detriment of society as a whole. **Furthermore, such instances may also create precedents that ultimately lead to hampering public participation, spread of disinformation and lack of trust within the Union.**

Amendment 13

Proposal for a directive

Recital 16

Text proposed by the Commission

(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.

Amendment

(16) Public participation should mean any statement or activity by a natural or legal person expressed or carried out ***including in the digital environment*** 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 ***content, news and current affairs***, political, scientific, academic, artistic, ***documentary***, commentary or satirical communications, publications or works ***regardless of the medium or format***, 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 ***and any other activity which serves the disclosure, dissemination or promotion to the public***. 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.

Amendment 14

Proposal for a directive Recital 18

Text proposed by the Commission

(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.

Amendment

(18) The notion of a matter of public interest should include also quality, ***composition***, safety or other relevant aspects of goods, products or services, ***country of origin, including the conditions under which these are produced or provided*** 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, ***labour rights, consumer rights or human rights, including the principle of non-discrimination, according to relevant legislation enforced in those areas.***

Amendment 15

Proposal for a directive Recital 20

Text proposed by the Commission

(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..

Amendment

(20) Abusive court proceedings typically involve litigation tactics used in bad faith such as ***exaggerated or excessive damage claims, requesting disproportionate prior restraint measures*** delaying proceedings, causing disproportionate costs to the defendant in the proceedings or forum shopping. ***In these cases where the claimant is in a significantly more influential position than the defendant, who is acting on a matter of public interest, it may be considered that the***

claimant does not primarily seek to benefit from his basic right to access to justice. Such proceedings may be combined with various forms of intimidation, harassment or threats. In this context, attention should also be paid to gender-based harassment as a particularly vicious indicator/form of abuse.

Amendment 16

Proposal for a directive Recital 22

Text proposed by the Commission

(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.

Amendment

(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 *or accessible, including online*. That includes for instance *acts which have a cross-border nature or dimension, such as* public participation in events organised by Union institutions, such as appearances in public hearings, or *widely disseminated publications, included in the digital environment. It shall also include statements or activities including social media campaigns and online media coverage on matters which the public of more than one Member State may legitimately take an interest on, and therefore are or may become of relevance to more than one Member State*, such as *economic or political activity of cross-border relevance*, cross-border pollution *cross-border enjoyment or abuse of fundamental rights or freedoms under EU law*, 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.

Amendment 17

Proposal for a directive Recital 24 a (new)

Text proposed by the Commission

Amendment

(24 a) Entities that are involved in defending the rights of persons engaging in public participation shall have the possibility to be part of the proceedings, in support of the defendants.

Amendment 18

Proposal for a directive Recital 26

Text proposed by the Commission

Amendment

(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***

(26) To provide the defendant with an additional safeguard, there should be a possibility to grant ***them*** a security to cover ***costs, including*** procedural ***costs, legal representation*** 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.

defendant.

Amendment 19

Proposal for a directive Recital 30

Text proposed by the Commission

(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.

Amendment 20

Proposal for a directive Recital 31

Text proposed by the Commission

(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.

Amendment

(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 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 unfounded ***and is not abusive*** in order to avoid an early dismissal.

Amendment

(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. ***Where the national law does not guarantee the compensation of costs for legal representation beyond statutory fee tables, the court should be enabled to indemnify costs not encompassed in statutory fee tables through the award of damages.*** Full compensation of damages should include both material and immaterial damages, such as physical and psychological harm.

Amendment 21

Proposal for a directive Recital 33

Text proposed by the Commission

(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

Amendment

(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 ***persons engaging in public participation, in particular*** 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 unfounded and abusive court proceedings in third countries.

Amendment 22

Proposal for a directive Recital 34 a (new)

Text proposed by the Commission

Amendment

(34 a) This Directive shall keep monitoring on the status of media freedom, pluralism and SLAPPs, including through the Media Freedom Rapid Response, which is crucial to provide updated data and alarms highlighting cases of possible forum shopping between member states, based on data which member states have to regularly provide and collaborate. Additionally, regular and adequate data collections across Member states are essential in the cross-border context in

order to develop and raise awareness on SLAPP cases. Member states should collect data on SLAPP cases such as the number of unfounded or abusive court proceedings against public participation, the number of dismissed cases, and figures on cross-border elements, description of legal basis and figures about acts of public to monitor and report on such cases across the EU, while taking arrangements to ensure protections of the rights of those involved, in particular the victims of these court procedures.

Amendment 23

Proposal for a directive Recital 35 a (new)

Text proposed by the Commission

Amendment

(35 a) Member States, in close cooperation with relevant stakeholders including professional associations, other social partners and civil society organisations, should take appropriate measures to ensure that the deontological rules that govern the conduct of legal professionals and the disciplinary sanctions for violation of those rules consider and include appropriate measures to discourage abusive lawsuits against public participation. In order to prevent the misuse of those measures and rules, an emphasis should be put on proper training and upskilling of legal professionals dealing with SLAPP cases, taking fully into account the established case-law of the European Court of Human Rights. This may include encouraging self-regulation by associations of legal professionals and/or, when this is consistent with national law and in the full respect of the independence of the profession, take initiatives for legislation or co-regulation.

Amendment 24

Proposal for a directive Recital 39 a (new)

Text proposed by the Commission

Amendment

(39 a) SLAPP cases targeting media outlets may aim to cause their closing down. A specific tool should be envisaged in order to ensure the economic sustainability of media organisations facing such cases and their ability to resist such attacks, as part of securing a framework favourable to media pluralism.

Amendment 25

Proposal for a directiveRecital 39 b (new)

Text proposed by the Commission

Amendment

(39 b) Data should be more systematically collected and monitored to properly evaluate the phenomenon and its evolution over time, mapping the different cases identified, analyzing the trends and reporting regularly, publishing information in accessible formats while ensuring the protection of fundamental rights including the right to privacy and to the protection of personal data.

Amendment 26

Proposal for a directiveRecital 39 c (new)

Text proposed by the Commission

Amendment

(39 c) Given the profound impact of these SLAPPs cases on the potential target's lives and mental health issues that can occur, Member states should set up specific psychological support to accompany them.

Amendment 27

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

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..

Amendment

This Directive provides safeguards against unfounded or abusive court proceedings in civil matters, ***including civil claims brought in criminal proceedings*** with cross-border implications brought against natural and legal persons, in particular journalists and human rights defenders, ***engaged*** in public participation ***including online***.

Amendment 28

Proposal for a directive Article 2 – paragraph 1

Text proposed by the Commission

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).

Amendment

This Directive shall apply to ***any type of proceedings*** of a civil or commercial nature with cross-border implications, ***commenced or continued before a national court at the time of its entry into force. It shall apply to existing and ongoing charges against public participation. The Directive shall extend to any type of claim, including interim and precautionary measures, counteractions or other particular type of remedies, and irrespective of*** the nature of the court or tribunal. It shall ***include civil claims brought in criminal proceedings. It shall*** not extend ***to claims invoking*** the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii).

Amendment 29

Proposal for a directive Article 3 – paragraph 1 – point 1

Text proposed by the Commission

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;***

Amendment

1. ‘public participation’ means any statement or activity, ***including in the digital environment*** 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 ***connected*** preparatory, supporting or assisting action directly linked thereto ***which may result from the exercise of other rights and freedoms including academic freedom, freedom of science, artistic freedom, freedom of culture. This may notably include, but is not exhaustive to, activities cited in Recital 16.***

Amendment 30

Proposal for a directive

Article 3 – paragraph 1 – point 2 – introductory part

Text proposed by the Commission

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:

Unmodified text included in the compromise

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:

Amendment 31

Proposal for a directive

Article 3 – paragraph 1 – point 2 – point a

Text proposed by the Commission

(a) public health, safety, the environment, climate or enjoyment of fundamental rights;

Amendment

(a) public health, safety, the environment, climate, ***cultural and societal diversity, consumer or labour rights, education, culture*** or enjoyment of fundamental rights ***such as freedom of expression and information, artistic freedom, media freedom and pluralism, non-discrimination, gender equality and protection on violence against women;***

Amendment 32 Proposal for a directive Article 3 – paragraph 1 – point 2 – point d

Text proposed by the Commission

Amendment

(d) allegations of corruption, fraud or criminality;

(d) allegations of corruption, fraud, ***tax evasion, abuse of power*** or criminality;

Amendment 33 Proposal for a directive
Article 3 – paragraph 1 – point 2 – point e

Text proposed by the Commission

Amendment

(e) activities aimed to fight disinformation;

(e) ***artistic, cultural, scientific and research activities and*** activities aimed to fight disinformation;

Amendment 34 Proposal for a directive Article 3 – paragraph 1 – point 2 – point e a
(new)

Text proposed by the Commission

Amendment

(e a) abuse or misuse of power by state or EU actors.

Amendment 35

Proposal for a directive
Article 3 – paragraph 1 – point 3 – point a a (new)

Text proposed by the Commission

Amendment

(a a) the detrimental position of the target resulting from imbalances in financial and legal resources;

Amendment 36 Proposal for a directive Article 3 – paragraph 1 – point 3 – point b a
(new)

Text proposed by the Commission

Amendment

(b a) the litigation tactics deployed by the claimant, including as regards the choice of jurisdiction and the use of dilatory tactics;

Amendment 37 Proposal for a directive Article 3 – paragraph 1 – point 3 – point b b

(new)

Text proposed by the Commission

Amendment

(b b) litigation tactics used in bad faith to restrict the freedom of expression and information with the intent to silence or restrain public scrutiny on a matter of legitimate public interest;

Amendment 38 Proposal for a directive Article 3 – paragraph 1 – point 3 – point c

Text proposed by the Commission

Amendment

(c) intimidation, harassment or threats on the part of the claimant or his or her representatives.

(c) intimidation, harassment or threats on the part of the claimant or his or her representatives ***in relation to the subject of the claim.***

Amendment 39

**Proposal for a directive
Article 4 – paragraph 2 – point a**

Text proposed by the Commission

Amendment

(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***

(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 either due to the cross-border nature or dimension of the act itself, or due to the interest which the public in different Member States may take in the matter concerned by the act; or***

Amendment 40

**Proposal for a directive
Article 5 – paragraph 3**

Text proposed by the Commission

Amendment

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

3. Member States ***shall*** 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.

matter ex officio.

Amendment 41

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall take the necessary measures to ensure that a court or tribunal seised of court proceedings against public participation may accept that ***entities*** safeguarding or promoting the rights of persons engaging in public participation, ***such as non-governmental organisations, professional and representative associations, trade unions and other collective bodies acting in the interest of the defendant***, may take part in those proceedings, either in support of the defendant or to provide information ***or opinion. This provision is without prejudice to existing rights of representation and intervention as guaranteed by other Union or national rules.***

Amendment 42

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

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 ***costs, including*** procedural costs, ***legal representation and associated*** costs and damages, if it considers such security appropriate in view of presence of elements indicating abusive court proceedings.

Amendment 43

Proposal for a directive Chapter III – title

Text proposed by the Commission

Early dismissal of **manifestly** unfounded court proceedings

Amendment

Early dismissal of unfounded court proceedings

Amendment 44

Proposal for a directive Article 9 – paragraph 1

Text proposed by the Commission

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**.

Amendment

1. Member States shall empower courts and tribunals to adopt an early decision to dismiss, in full or in part, **unfounded lawsuits** against public participation.

Amendment 45Article 9 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States **shall** 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.

Amendment 46

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 unfounded. **Pursuant to paragraph 1, the court shall refuse to grant early dismissal only where the claimant has established a prima facie case as to each essential element of the**

cause of action and where the claim is not characterised by elements of abuse.

Amendment 47

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

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.

Amendment

Member States shall take the necessary measures to ensure that a claimant who has brought abusive court proceedings against public participation **are** 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. ***This award of costs should be an automatic feature of the court's decision within the same proceedings relating to the given abusive lawsuit. Where the national law does not guarantee the compensation of costs for legal representation beyond statutory fee tables, the court should be enabled to indemnify costs not encompassed in statutory fee tables through compensation of damages pursuant to Article 15.***

Amendment 48

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

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..

Amendment

Member States shall take the necessary measures to ensure that a natural or legal person who has suffered harm, ***regardless of its being physical or psychological*** as a result of abusive court proceedings against public participation is able to claim and to obtain full compensation for that harm, ***including any loss of income, reputation or opportunity. To ensure that accessing such compensation is not a burden for the victims and to avoid perpetuating the***

negative impact of the SLAPPs on the victims, this compensation shouldn't require the filing of a separate formal claim by the defendant and should come as an automatic feature of the proceedings.

Amendment 49

Proposal for a directive Article 17 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 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.

Amendment 50

Proposal for a directive Article 21 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**1 year** 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.

Article 21 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member States shall support awareness raising campaigns on unfounded or abusive court proceedings against public participation organised among others by national entities, including National Human Rights Institutions and civil society organizations.

Amendment 52 Proposal for a directive
Article 21 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. Member States shall, taking into account their institutional arrangements on judicial statistics, entrust one or more authorities to be responsible to collect and aggregate, in full respect of the rights to privacy and the protection of data data on unfounded or abusive court proceedings against public participation initiated in their jurisdiction. Member States should ensure that one authority is responsible to coordinate the information and report the aggregated data collected at national level to the Commission on a yearly basis starting by the end of term.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)
References	COM(2022)0177 – C9-0161/2022 – 2022/0117(COD)
Committee responsible Date announced in plenary	JURI 5.5.2022
Opinion by Date announced in plenary	CULT 15.12.2022
Rapporteur for the opinion Date appointed	Stelios Kouloglou 2.5.2023
Discussed in committee	1.3.2023
Date adopted	25.5.2023
Result of final vote	+: 22 –: 2 0: 0
Members present for the final vote	Asim Ademov, Andrea Bocskor, Ilana Cicurel, Tomasz Frankowski, Romeo Franz, Sylvie Guillaume, Hannes Heide, Petra Kammerevert, Niyazi Kizilyürek, Predrag Fred Matić, Martina Michels, Niklas Nienaß, Peter Pollák, Andrey Slabakov, Massimiliano Smeriglio, Sabine Verheyen, Milan Zver
Substitutes present for the final vote	Isabella Adinolfi, João Albuquerque, Marcel Kolaja, Salima Yenbou
Substitutes under Rule 209(7) present for the final vote	Alexander Alexandrov Yordanov, Karen Melchior, Eleni Stavrou

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

22	+
PPE	Asim Ademov, Isabella Adinolfi, Alexander Alexandrov Yordanov, Tomasz Frankowski, Peter Pollák, Eleni Stavrou, Sabine Verheyen, Milan Zver
Renew	Ilana Cicurel, Karen Melchior, Salima Yenbou
S&D	João Albuquerque, Sylvie Guillaume, Hannes Heide, Petra Kammerevert, Predrag Fred Matić, Massimiliano Smeriglio
The Left	Niyazi Kizilyürek, Martina Michels
Verts/ALE	Romeo Franz, Marcel Kolaja, Niklas Nienaaß

2	-
ECR	Andrey Slabakov
NI	Andrea Bocskor

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)		
References	COM(2022)0177 – C9-0161/2022 – 2022/0117(COD)		
Date submitted to Parliament	28.4.2022		
Committee responsible Date announced in plenary	JURI 5.5.2022		
Committees asked for opinions Date announced in plenary	CULT 15.12.2022	LIBE 5.5.2022	FEMM 15.9.2022
Not delivering opinions Date of decision	FEMM 8.9.2022		
Associated committees Date announced in plenary	LIBE 15.12.2022		
Rapporteurs Date appointed	Timo Wölken 17.5.2022		
Discussed in committee	27.2.2023	21.3.2023	
Date adopted	27.6.2023		
Result of final vote	+: –: 0:	15 1 1	
Members present for the final vote	Ilana Cicurel, Angel Dzhambazki, Pierre Karleskind, Sergey Lagodinsky, Gilles Lebreton, Karen Melchior, Raffaele Stancanelli, Adrián Vázquez Lázara, Marion Walsmann, Timo Wölken, Lara Wolters, Javier Zarzalejos		
Substitutes present for the final vote	Emil Radev, René Repasi		
Substitutes under Rule 209(7) present for the final vote	François Alfonsi, Isabel Carvalhais, Luděk Niedermayer		
Date tabled	29.6.2023		

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

15	+
ECR	Raffaele Stancanelli
PPE	Luděk Niedermayer, Emil Radev, Marion Walsmann, Javier Zarzalejos
Renew	Ilana Cicurel, Pierre Karleskind, Karen Melchior, Adrián Vázquez Lázara
S&D	Isabel Carvalhais, René Repasi, Tiemo Wölken, Lara Wolters
Verts/ALE	François Alfonsi, Sergey Lagodinsky

1	-
ID	Gilles Lebreton

1	0
ECR	Angel Dzhambazki

Key to symbols:

+ : in favour

- : against

0 : abstention