



2022/0117(COD)

07.6.2023

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

PA_Legam

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

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”).

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 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 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, 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

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

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.*

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

(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.

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, ***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 against public participation.

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 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

Amendment

(16) Public participation should mean any statement or activity by a natural or legal person expressed or carried out

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.

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

Amendment

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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.

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 defendant.***

(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.

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 21

**Proposal for a directive
Recital 33**

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.

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 directive Recital 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 directive Recital 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 Nienaa

2	-
ECR	Andrey Slabakov
NI	Andrea Bocskor

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention