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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)

Subject: 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")
- Confirmation of the final compromise text with a view to agreement

I. INTRODUCTION

1. On 27 April 2022, the Commission adopted the proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation").
2. The proposal for a directive is one of the initiatives foreseen in the European Democracy Action Plan, which is aimed at strengthening media freedom and pluralism. As part of a package, the Commission also adopted the 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")¹.

¹ C(2022) 2428 final

II. COURSE OF THE PROCEDURE

3. In the Council, the proposal was examined in the Working Party on Civil Law Matters (SLAPP). At the meeting of the SLAPP Working Party on 13 May 2022, the Commission presented the proposal for the Anti-SLAPP Directive, the accompanying Staff Working Document and the Anti-SLAPP Recommendation. The examination of the proposal began during the French Presidency and was continued during the Czech and Swedish Presidencies.
4. The Council agreed on a general approach at the JHA Council on 9 June 2023.
5. In the European Parliament, the Legal Affairs Committee (JURI) is the lead committee, in association with the Committee on Civil Liberties, Justice and Home Affairs (LIBE), while the committee for opinion is the Culture and Education Committee (CULT). The rapporteur for the file is Tiemo Wölken (S&D, Germany), who presented his draft report in the JURI Committee on 2 March 2023.
6. The European Parliament agreed on its negotiating mandate in the plenary on 11 July 2023.
7. The negotiations between the co-legislators started on 12 July 2023. Three political trilogues and 11 inter-institutional technical meetings took place since. The co-legislators reached a provisional political agreement on 29 November 2023, which resulted in the final compromise text as set out in document 16344/2023.

III. SUBSTANCE OF THE PROPOSALS

8. The proposed Directive aims to provide natural and legal persons who engage in public participation, including journalists and human rights defenders, with appropriate legal tools against manifestly unfounded claims and abusive proceedings aimed at intimidating and silencing them. Based on Article 81(2)(f) TFEU, the Directive is intended to provide procedural safeguards in civil matters with cross-border implications.

9. The main elements of the compromise text are the following:
- a definition for "abusive proceedings against public participation" so they become more easily identifiable to national courts and judges;
 - a definition of cross-border cases whereby a SLAPP case is considered cross-border unless both parties are domiciled in the same Member State as the court seized and all other elements relevant to the situation are located only in that Member State;
 - an early dismissal of manifestly unfounded claims;
 - an accelerated treatment of applications for early dismissal and financial security;
 - the reimbursement of all types of costs available under national law, including the full cost of legal representation, unless excessive;
 - the possibility to impose proportionate and dissuasive penalties or other equally effective appropriate measures on the party who brought the abusive proceedings;
 - the possibility to refuse the recognition and enforcement of third-country judgments in abusive court proceedings and to receive compensation for the costs incurred in those proceedings.

IV. CONCLUSIONS

10. The Permanent Representatives Committee is invited to:
- (a) confirm the agreement on the final compromise text as set out in document 16344/23 with a view to reaching an agreement at first reading with the European Parliament;
 - (b) authorise the Chair of the Permanent Representatives Committee to inform the Chair of the European Parliament's Committee on Legal affairs that, should the European Parliament adopt its position at first reading on the text of the proposal in the exact form as set out in document 16344/23 and subject to revision of that text by the lawyer-linguists of both institutions, the Council will approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position.
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