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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation') (**first reading**)
- Adoption of the legislative act
= Statements

Statement by Estonia

Estonia supports the purpose of the Directive, which is to protect freedom of speech and free media, by giving journalists, human rights defenders and other persons against whom manifestly unfounded or abusive claims against public participation have been filed, certain additional guarantees in civil court proceedings when standing up for their rights. However, we consider it necessary to express the following concerns regarding the application of the Directive.

Firstly, there are no known problems with SLAPPs in Estonia. Even though we have sympathy to the fact that there might be difficulties with SLAPPs elsewhere, we can see the danger that in our case, the Directive would limit access to justice and would likely affect civil court proceedings more generally. Namely, the defendants might apply for the new measures even though no SLAPP has been filed against them. As we are not aware of problems with SLAPPs in our courts, the SLAPP-related applications would likely be made lightly, also in legitimate proceedings. Therefore, the new measures would likely burden the courts.

Furthermore, it must be taken into account that it may not be easy to determine whether it is a SLAPP or not. Before the court would be able to decide on the merits of the case, there might be proceedings in several court levels on whether it is a SLAPP and the claimant should be sanctioned or whether the claimant is exercising his or her right to go to court for protecting his or her rights. The Directive would make going to court riskier than before. In our view, the fear that going to court for protecting his or her rights may be sanctioned would itself hinder access to justice.

Secondly, we are concerned about the obligation to treat in an accelerated manner applications for award of costs of the proceedings, penalties or other appropriate measures such as compensation of damages or publication of the court decisions (Article 5a(2)). According to Estonian law, one of the purposes of civil procedure is to guarantee that the courts deal with civil cases within a reasonable period of time. At each stage of proceedings, the court takes steps to help the parties file their statements in full at the proper time and facilitate dealing with the case in the minimum possible time. Court proceedings in Estonia are among the fastest in the EU.

At the same time, we do not have an accelerated procedure for the remedies referred to in Article 5a(2). Creating such an accelerated procedure would also be legally problematic and the compliance with the Constitution would be questionable. For example, if we would need to allow an accelerated procedure for damages caused by SLAPP, it would create unequal treatment for victims who have suffered non-contractual damages on other legal grounds (e.g. damage caused by criminal offence, health damage, damage caused by bodily harm). Additionally, we cannot provide accelerated procedures for all cases, because judicial resources are limited and any accelerated procedure would be at the expense of other procedures.

Therefore, Estonia would like to interpret Article 5a(2) in such a way that it would not oblige us to create an accelerated procedure because the obligations foreseen in that provision are already fulfilled as prescribed above.

Statement by Hungary

Hungary recognises and promotes equality between men and women in accordance with the Fundamental Law of Hungary and the primary law, principles and values of the European Union, as well as commitments and principles stemming from international law. Equality between women and men is enshrined in the Treaties of the European Union as a fundamental value. In line with these and its national legislation, Hungary interprets gender as providing equal chances and opportunities for women and men. In line with these and its national legislation, Hungary interprets the concept of 'gender' as reference to 'sex' and the concept of 'gender equality' as 'providing equal chances and opportunities for women and men' in the 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").
