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**NOTE**

From:	Presidency
To:	Delegations
No. Cion doc.:	8529/22 + ADD 1
Subject:	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”) - Table of correspondence

In order to facilitate the discussions in the Working Party on Civil Law Matters (SLAPP), delegations will find below a table of correspondence between the articles and the recitals of the proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings, prepared by the Presidency.

Table of correspondence between articles and recitals of 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”)

<b>Articles</b>	<b>Recitals</b>
	(1) Article 2 of the Treaty on European Union states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
	(2) Article 10(3) of the Treaty on European Union states that every Union citizen has the right to participate in the democratic life of the Union. The Charter of Fundamental Rights of the European Union (the ‘Charter’) provides, <i>inter alia</i> , for the rights to respect for private and family life (Article 7), the protection of personal data (Article 8), freedom of expression and information, which includes respect for the freedom and pluralism of the media (Article 11), and to an effective remedy and to a fair trial (Article 47).
	(3) The right to freedom of expression and information as set forth in Article 11 of the Charter includes the right to hold opinions and to receive and impart

	<p>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”).</p>
<p>CHAPITRE I</p> <p><b>General provisions</b></p>	
<p><i>Article 1</i></p> <p><b>Subject matter</b></p> <p>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.</p>	<p>(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 <i>strategic lawsuits against public participation</i> or ‘SLAPPs’).</p> <p>(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.</p>

(6) Investigative journalists in particular play a key role in combating organised crime, corruption and extremism. Their work carries particularly high risks and they are experiencing a growing number of attacks and harassment. A robust system of safeguards is needed to enable them to fulfil their crucial role as watchdogs on matters of legitimate public interest.

(7) Human rights defenders also play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law. They should be able to participate actively in public life and make their voice heard on policy matters and in decision-making processes without fear of intimidation. Human rights defenders refer to individuals or organisations engaged in defending fundamental rights and a variety of other rights, such as environmental and climate rights, women's rights, LGBTIQ rights, the rights of the people with a minority racial or ethnic background, labour rights or religious freedoms. Other participants in public debate, such as academics and researchers, also deserve adequate protection.

(8) A healthy and thriving democracy requires that people are able to participate actively in public debate without undue interference by public authority or other powerful actors, be they domestic or foreign. In order to secure meaningful participation, people should be able to access reliable information, which enables them to form their own opinions and exercise their own judgement in a public

space in which different views can be expressed freely.

(9) To foster this environment, it is important to protect journalists and human rights defenders from court proceedings against public participation. Such court proceedings are not initiated for the purpose of access to justice, but to silence public debate typically using harassment and intimidation.

(10) SLAPPs are typically initiated by powerful entities, for example individuals, lobby groups, corporations and state organs. They often involve an imbalance of power between the parties, with the claimant having a more powerful financial or political position than the defendant. Although not being an indispensable component of such cases, where present, an imbalance of power significantly increases the harmful effects as well as the chilling effects of court proceedings against public participation.

(11) Court proceedings against public participation may have an adverse impact on the credibility and reputation of journalists and human rights defenders and exhaust their financial and other resources. Because of such proceedings, the publication of information on a matter of public interest may be delayed or altogether avoided. The length of procedures and the financial pressure may have a chilling effect on journalists and human rights defenders. The existence of such practices may therefore have a deterrent effect on their work by contributing to self-censorship in anticipation of possible future court proceedings, which leads

	<p>to the impoverishment of public debate to the detriment of society as a whole.</p> <p>(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.</p> <p>(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.</p>
<p><i>Article 2</i></p> <p><b>Scope</b></p>	<p>(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</p>

<p>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 (<i>acta iure imperii</i>).</p>	<p>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.</p> <p>(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 (<i>acta iure imperii</i>) 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.</p>
<p><i>Article 3</i></p> <p><b>Definitions</b></p> <p>For the purposes of this Directive, the following definitions shall apply:</p> <p>1. <b>‘public participation’</b> 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;</p>	<p>(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</p>

	<p>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.</p> <p>(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.</p>
<p>2. <b>‘matter of public interest’</b> 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:</p> <p>(a) public health, safety, the environment, climate or enjoyment of fundamental rights;</p> <p>(b) activities of a person or entity in the public eye or of public interest;</p> <p>(c) matters under public consideration or review by a legislative, executive, or judicial body, or any other public official proceedings;</p>	<p>(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.</p> <p>(19) Activities of a person or entity in the public eye or of public interest are also matters of public interest to which the public may legitimately take an interest in. However, there is no legitimate interest involved where the sole purpose of a statement or activity concerning such a person or entity is to satisfy the curiosity</p>

<p>(d) allegations of corruption, fraud or criminality;</p> <p>(e) activities aimed to fight disinformation;</p>	<p>of a particular audience regarding the details of a person’s private life.</p>
<p>3. <b>‘abusive court proceedings against public participation’</b>  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:</p> <p>(a) the disproportionate, excessive or unreasonable nature of the claim or part thereof;</p> <p>(b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;</p> <p>(c) intimidation, harassment or threats on the part of the claimant or his or her representatives.</p>	<p>(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.</p>
<p><i>Article 4</i></p> <p><b>Matters with cross-border implications</b></p> <p>1. For the purposes of this Directive, a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised.</p> <p>2. Where both parties to the proceedings are domiciled in the same</p>	<p>(21) A cross-border dimension of SLAPPs adds to the complexity and challenges faced by defendants, as they need to deal with proceedings in other jurisdictions, sometimes in multiple jurisdictions at the same time. This, in turn, results in additional costs and burdens with even more adverse consequences.</p> <p>(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</p>

<p>Member State as the court seised, the matter shall also be considered to have cross-border implications if:</p> <p>(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</p> <p>(b) the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State.</p>	<p>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.</p>
<p>CHAPITRE II</p> <p><b>Common rules on procedural safeguards</b></p>	
<p><i>Article 5</i></p> <p><b>Applications for procedural safeguards</b></p> <p>1. Member States shall ensure that when court proceedings are brought against natural or legal persons on account of their engagement in public participation, those persons can apply for:</p> <p>(a) security in accordance with Article 8;</p>	<p>(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.</p>



<p>(b) early dismissal of manifestly unfounded court proceedings in accordance with Chapter III;</p> <p>(c) remedies against abusive court proceedings in accordance with Chapter IV.</p> <p>2. Such applications shall include:</p> <p>(a) a description of the elements on which they are based;</p> <p>(b) a description of the supporting evidence.</p> <p>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 <i>ex officio</i>.</p>	
<p><i>Article 6</i></p> <p><b>Subsequent amendment to claim or pleadings</b></p> <p>Member States shall ensure that any subsequent amendments to the claims or the pleadings made by the claimant in the main proceedings, including the discontinuation of proceedings, do not affect the possibility for the court or tribunal seised of the matter to consider the court proceedings abusive and to impose remedies in accordance with Chapter IV..</p>	<p>(24) In some abusive court proceedings against public participation, claimants deliberately withdraw or amend claims or pleadings to avoid awarding costs to the successful party. This legal strategy may deprive the court or tribunal of the power to acknowledge the abusiveness of the court proceeding, leaving the defendant with no chance to be reimbursed of procedural costs. Such withdrawals or amendments should therefore not affect the possibility for the courts seised to impose remedies against abusive court proceedings.</p> <p>(25) If the main claim is dismissed later on in the ordinary proceedings, the defendant may still benefit of other remedies against abusive court proceedings such as award of costs and compensation of damages.</p>



*Article 7*

**Third party intervention**

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

*Article 8*

**Security**

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

(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.

CHAPITRE III

**Early dismissal of manifestly unfounded court proceedings**



<p><i>Article 9</i></p> <p><b>Early dismissal</b></p> <p>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.</p> <p>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.</p>	
<p><i>Article 10</i></p> <p><b>Stay of the main proceedings</b></p> <p>Member States shall ensure that if the defendant applies for early dismissal, the main proceedings are stayed until a final decision on that application is taken.</p>	<p>(27) A stay of the proceedings, when an application for early dismissal has been filed, ensures that procedural activity is suspended, hence reducing the procedural costs of the defendant.</p> <p>(28) To avoid any impact on the access to an effective remedy, the stay should be temporary and kept until a final decision on the application is taken. A final decision means a decision that is no longer subject to judicial review.</p>
<p><i>Article 11</i></p> <p><b>Accelerated procedure</b></p> <p>Member States shall ensure that an application for early dismissal is treated in an accelerated procedure, taking into account the circumstances of the case and the right to an effective remedy and</p>	<p>(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</p>

<p>the right to a fair trial.</p>	<p>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 threaten the defendant.</p>
<p><i>Article 12</i></p> <p><b>Burden of proof</b></p> <p>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.</p>	<p>(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.</p>
<p><i>Article 13</i></p> <p><b>Appeal</b></p> <p>Member States shall ensure that a decision refusing or granting early dismissal pursuant to Article 9 is subject to an appeal.</p>	
<p>CHAPITRE IV</p> <p><b>Remedies against abusive court proceedings</b></p>	
<p><i>Article 14</i></p> <p><b>Award of costs</b></p> <p>Member States shall take the necessary measures to ensure that a</p>	<p>(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</p>

<p>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.</p>	<p>should not be considered as excessive per se (...).</p>
<p><i>Article 15</i></p> <p><b>Compensation of damages</b></p> <p>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.</p>	<p>(31) (...) Full compensation of damages should include both material and immaterial damages, such as physical and psychological harm.</p>
<p><i>Article 16</i></p> <p><b>Penalties</b></p> <p>Member States shall provide that courts or tribunals seised of abusive court proceedings against public participation have the possibility to impose effective, proportionate and dissuasive penalties on the party who brought those proceedings.</p>	<p>(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.</p>

## CHAPITRE V

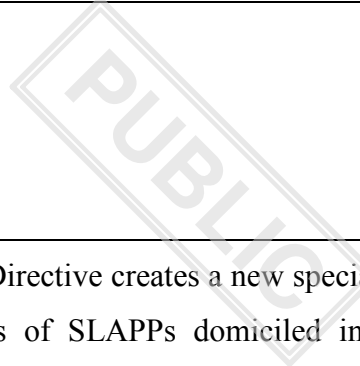
### Protection against third-country judgments

(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.

#### *Article 17*

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

Member States shall ensure that the recognition and enforcement of a third-country judgment in court proceedings on account of public participation by natural or legal person domiciled in a Member State is refused as manifestly contrary to public policy (*ordre public*) if those proceedings would have been considered



CHAPITRE VI

**Final provisions**

(35) This Directive should be without prejudice to the protection that other instruments of Union law or national law provide to natural and legal persons that engage in public participation. In particular, it does not detract in any way from the protection offered by Directive 2019/1937 on the protection of persons who report breaches of Union law, as implemented in national law. As regards situations falling within the scope of this Directive and of Directive 2019/1937, the protection offered by both acts should therefore apply.

(36) This Directive is complementary to the Commission recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”). This recommendation is addressed to Member States and it provides a comprehensive toolbox of measures including training, awareness-raising, support to targets of abusive court proceedings and data collection, reporting and monitoring of court proceedings against public participation.



<p><i>Article 19</i></p> <p><b>Relations with the 2007 Lugano Convention</b></p> <p>This Directive shall not affect the application of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007.</p>	
<p><i>Article 20</i></p> <p><b>Review</b></p> <p>Member States shall provide the Commission with all relevant information regarding the application of this Directive by [<i>5 years from the date of transposition</i>]. On the basis of the information provided, the Commission shall by [<i>6 years from the date of transposition</i>] 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.</p>	
<p><i>Article 21</i></p> <p><b>Transposition into national law</b></p>	



<p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years from the date of entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>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.</p> <p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>	
<p><i>Article 22</i></p> <p><b>Entry into force</b></p> <p>This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>	
<p><i>Article 23</i></p> <p><b>Addressees</b></p> <p>This Directive is addressed to the Member States.</p>	

	<p>(37) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.</p>
	<p>(38) [In accordance with Articles 1, 2 and 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application] OR</p> <p>(39) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...] its wish to take part in the adoption and application of this Directive.]</p>