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## NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	8604/23 INIT
No. Cion doc.:	8529 2022 INIT + ADD 1
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”) – General approach

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## 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’)<sup>1</sup> and 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’)<sup>2</sup>.

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<sup>1</sup> 8529/22

<sup>2</sup> C(2022) 2428 final

2. The proposal for a directive is one of the initiatives foreseen in the European Democracy Action Plan<sup>3</sup>, which is aimed at strengthening media freedom and pluralism. Based on Article 81(2)(f) TFEU, it provides journalists, human rights defenders and others actively participating in public debate with appropriate legal tools against lawsuits aimed at intimidating and silencing them. The Directive is intended to provide procedural safeguards in civil matters with cross-border implications.
3. 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.
4. On 26 October 2022, the European Economic and Social Committee issued its opinion<sup>4</sup> on the proposal.

## **II. WORK IN THE COUNCIL**

5. In the Council, the proposal was examined in the Working Party on Civil Law Matters (SLAPP) (hereinafter: SLAPP Working Party). 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<sup>5</sup> and the Anti-SLAPP Recommendation.

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<sup>3</sup> COM(2020) 790 final

<sup>4</sup> SOC/734-EESC-2022

<sup>5</sup> 8529/22 ADD 1

6. The article-by-article examination of the proposal began during the French Presidency and was continued during the Czech Presidency at the Working Party meetings on 24 May, 15 June, 25 July and 9 September 2022.
7. At the SLAPP Working Party on 10 October 2022, the Czech Presidency presented the revised text on Chapters I and II. This compromise text was discussed at two subsequent Working Party meetings and was followed by two revised versions. During the SLAPP Working Party on 22 November, the Czech Presidency presented a compromise proposal on Chapters III and IV.
8. A policy debate was organised at the JHA Council on 9 December 2022, during which the Ministers reiterated their support for the general aim of the proposal while raising a number of key issues, notably the need to ensure that the claimants' access to justice is maintained.
9. On the basis of the clear political guidance given by the Ministers, the Czech Presidency and Swedish Presidency presented a new compromise text on Chapters I to IV which was discussed at the SLAPP Working Party on 31 January and 17 February 2023. Two other compromise proposals on the entire text of the directive were analysed by the Member States on 15 March and 18 April 2023, respectively.
10. Taking into account the comments from delegations during that last Working Party meeting, the Presidency issued a final compromise proposal on 24 April 2023 and submitted it to an informal consultation. Only one delegation declared that it was not in a position to support the text. Two Member States raised scrutiny reservations. Given the general support from all of the other delegations, the Presidency concluded that an agreement had been reached at technical level on the compromise text as set out in the Annex.

11. During discussions at technical level as well as at ministerial level, Member States have expressed their support for the aim of the directive to eliminate obstacles to the proper functioning of civil proceedings, while providing protection for the right to freedom of expression and media freedom. Member States have however stressed that the procedural safeguards provided in the directive should be carefully targeted and in line with the right to an effective remedy and to a fair trial, in order to eliminate the risk of abuses by those the directive aims to protect. Additionally, they flagged the need to ensure that the anti-SLAPP measures would not prevent legitimate claims from being pursued in the courts and consequently violate the claimants' access to justice.
12. The Presidency believes that the compromise text addresses these concerns and provides a carefully balanced approach when it comes to the protection of the fundamental rights at stake.

### **III. CONCLUSIONS**

13. In light of the above, the Permanent Representatives Committee is invited to:
  - confirm the agreement on the text of the proposal for a Directive as set out in the Annex to this note; and
  - recommend that the Council reach a general approach on this text;

the Council is invited to

- reach a general approach on the text as set out in the Annex to this note, which will constitute the basis for the negotiations with the European Parliament in the framework of the ordinary legislative procedure (Art. 294 TFEU).

2022/0117 (COD)

Proposal for a

**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”)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2)(f) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (-1) The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which the free movement of persons is ensured. To establish such an area, the Union is to adopt, among others, measures relating to judicial cooperation in civil matters having cross-border implications needed for the elimination of obstacles to the proper functioning of civil proceedings. That purpose should be pursued if necessary by promoting the compatibility of the rules on civil procedure that are applicable in the Member States.**

- (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, *inter alia*, for the rights to respect for private and family life (Article 7), the protection of personal data (Article 8), ~~the~~ 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 ~~established 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 corresponding~~ 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”).
- (4) The purpose of this Directive is **to eliminate obstacles with regard to the proper functioning of civil proceedings, ~~to while provide~~ providing** protection ~~for~~ 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’).

- (4a) **It is necessary to bear in mind that public participation is not always conducted in good faith. The dissemination of disinformation should not be protected by this Directive. To this end, the rules in this Directive should leave the court or tribunal seised with the matter the discretion in order to consider whether the application of the relevant safeguards is appropriate in a particular case. For example, if allegations made by the defendant are fabricated and their purpose is to damage the claimant's reputation, the defendant should not be granted protection as provided for in Chapters II, III and IV of this Directive.**
- (5) **Journalists play an important role in facilitating public debate and in the imparting and reception of information, opinions and ideas. They should be able to conduct their activities effectively in order to ensure that citizens have access to a plurality of views in European democracies.** It is essential that **journalists** 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.~~ **The protection afforded to journalists under the right to freedom of expression, in recognition of their important role, is subject to the proviso that they should act in good faith, in order to provide accurate and reliable information, in accordance with the ethics of journalism.**
- (5a) **This Directive does not provide a definition of a journalist, since the aim is to protect any natural and legal person on account of their engagement in public participation. However, it should be underlined that journalism is a function shared by a wide range of actors, including reporters, analysts, columnists and bloggers, as well as others who engage in forms of self-publication in print, on the internet or elsewhere.**

- (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 **required**~~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.~~

**Human rights defenders are individuals, groups and organizations in civil society that promote and protect universally recognised human rights and fundamental freedoms. As such, human rights defenders are committed to promoting and safeguarding civil, political, economic, social, cultural and environmental rights and to fighting against direct or indirect discrimination as set out in Article 21 of the Charter.**

- (7a) Other **important** participants in public debate, such as academics and researchers, also deserve ~~adequate~~**effective** protection, **since they may also be targeted by SLAPPs. In a democratic society, members of the academic community should be able to engage in research, teaching, learning and communication in society without fear of reprisal.**



- (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, ~~such as 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 **an imbalance of power is** ~~not being~~ an indispensable component of such cases, where present, ~~an imbalance of power~~ **it** 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 **may** 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 **altogether**. 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 ~~and~~ to the detriment of society as a whole.

- (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 domiciled~~ 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 ~~increase drive up~~ the length and cost of ~~the litigation~~, and to ~~bring cases~~ **initiate proceedings** in a jurisdiction **that** they perceive to be favourable ~~to for~~ their case, **instead of rather than into the jurisdiction** ~~court~~ best placed to hear the claim. Such practices also place unnecessary and harmful burdens on national court systems.
- (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, **such as**. ~~This involves for example~~ internet providers, publishing houses or print shops, which face or are threatened with court proceedings for providing services to ~~the persons targeted with~~ **by** court proceedings.
- (13a) A manifestly unfounded claim may be understood as being a claim which is so obviously unfounded that there is no scope for any reasonable doubt. This needs to be assessed on a case-by-case basis in relation to each specific claim.**
- (14) This Directive should apply to any type of legal claim or action of a civil or commercial nature with cross-border implications **entertained in civil proceedings** whatever the nature of the court or tribunal. **This includes procedures for interim and precautionary measures, counteractions or other particular types of remedies available under other instruments.** ~~This~~ **However, it should not apply to includes** civil claims brought in criminal proceedings **and governed fully or partially by criminal procedural law.**

- (15) The Directive ~~does~~ **should** not apply to claims arising out of liability of the State for actions or omissions in the exercise of ~~s~~State authority (*acta iure imperii*) and claims against officials who act on behalf of the ~~s~~State and liability for acts of public authorities, including liability of publicly appointed office-holders. **This Directive should not apply to criminal matters or arbitration and should be without prejudice to criminal procedural law.**
- (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 **current or future** public interest, such as the creation, exhibition, advertisement, **marketing activities** or other promotion of journalistic, political, scientific, academic, artistic, commentary or satirical communications, publications or works, and any preparatory activities directly linked thereto. **Future public interest refers to the fact that a matter might not yet be of public interest, but could become so, once the public becomes aware of it, for example by means of a publication. Public participation** 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 ~~into~~ 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~~ **claims before courts or administrative bodies** and participation in public hearings.

- (16a) Public participation should also include preparatory, supporting or assisting activities that have a direct and inherent link to the statement or activity in question ~~and that are targeted to stifle public participation.~~ **Such activities should directly concern a specific act of public participation or be based on a contractual link between the actual target of SLAPP and the person providing the preparatory, supporting or assisting activity. Bringing claims not against a journalist or a human rights defender but against the internet platform on which they publish their work or against the company that prints a text or a shop that sells the text can be an effective way of silencing public participation, as without such services opinions cannot be published and thus cannot influence public debate.**
- (16b) In addition, ~~it~~ **public participation** can cover other activities meant to inform or influence public opinion or to **encourage** 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.
- ~~(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.~~
- (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~~ **where** the matter contains an element of public interest, for instance **where it concerns** a product or service which fails to comply with environmental or safety standards.

- (19) Activities of a **public figure** ~~person or entity in the public eye or of public interest~~ **should** ~~are~~ **also be considered as** matters of public interest, ~~since to which~~ the public may legitimately take an interest in **them**. 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 of a particular audience regarding the details of a person's private life.
- (19a) **Matters under consideration by a legislative, executive or judicial body or any other official proceedings can be examples of matters of public interest. Concrete examples of such matters could be legislation concerning environmental standards or product safety, an environmental license for a polluting factory or mine or court proceedings with legal significance beyond the individual case, for instance a case about equality, discrimination in the workplace, environmental crime or money laundering.**
- (19b) **Matters of public interest may also relate to alleged criminal offences, such as corruption, fraud, tax evasion or sexual harrassment.**
- (20) Abusive court proceedings typically involve litigation tactics **deployed by the claimant and** used in bad faith **including but not limited to the choice of jurisdiction, the use of delaying strategies and** ~~such as delaying proceedings, incurring~~ **causing** disproportionate costs ~~for~~ **to** the defendant in the proceedings ~~or forum shopping~~. Those **litigation** tactics, **which are often combined with various forms of intimidation, harassment or threats before or during the proceedings,** are used by the claimant for ~~other~~ purposes **other** than gaining access to justice **and aim to achieve a chilling effect on public participation in the matter at stake.** ~~Such tactics are often, although not always, combined with various forms of intimidation, harassment or threats.~~

**(20a) Claims made in abusive court proceedings can be either fully or partially unfounded. This means that a claim does not necessarily have to be completely unfounded for the proceedings to be considered abusive. For example, even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive, if a manifestly excessive amount or remedy is claimed. On the other hand, if the claimant in court proceedings pursues claims that are founded, such proceedings should not be regarded as abusive for the purposes of this Directive.**

~~(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.~~

~~(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.~~

- (23) Defendants should be able to apply for the following procedural safeguards: ~~a request for a security to cover procedural~~ **the costs of the proceedings**, or ~~procedural~~ **the costs of the proceedings** and, **where applicable**, damages, ~~a request for an early dismissal of manifestly unfounded court proceedings~~ **claims**, ~~a request for remedies against abusive court proceedings (award of costs, compensation of damages and penalties~~ **or other appropriate measures**), or ~~some or all of them at the same time~~. **Such procedural safeguards should be carefully applied in line with the right to an effective remedy and to a fair trial, as set out in Article 47 of the Charter, leaving the court discretion in individual cases to appropriately examine the matter at hand and thereby allowing speedy dismissal of manifestly unfounded claims without restricting the effective access to justice.**
- (23a) **Member States should lay down or maintain the rules on how the court or tribunal seised on the matter should deal with applications for procedural safeguards. For instance, Member States could apply existing civil procedural rules on the handling of evidence to assess whether the conditions for the application of the procedural safeguards are met or could establish specific rules for this purpose. Such national rules should not make the exercise of these procedural safeguards unduly arduous.**

- (24) In some abusive court proceedings against public participation, claimants deliberately withdraw or amend claims or pleadings **in order** to avoid awarding costs to the successful party. This legal strategy **could, in some Member States,** ~~may deprive the court or tribunal of the power to acknowledge the abusiveness of the court proceeding, leaving~~ leave the defendant with no chance to be reimbursed of ~~procedural~~ **the costs of the proceedings**. Such withdrawals or amendments, **if provided for by national law, and with respect for the parties' power to dispose over the proceedings,** should therefore not affect the possibility for the courts ~~seised~~ **defendant to impose** apply for remedies against abusive court proceedings, **in accordance with national law. This is without prejudice to the possibility for Member States to provide that procedural safeguards can be taken *ex officio*.**
- ~~(25) If the main claim is dismissed later on in the ordinary proceedings the defendant may still benefit of other remedies available against abusive court proceedings such as award of costs and, compensation of damages.~~
- (25a) To provide a more effective level of protection, non-governmental organisations should be able to support the defendant in court proceedings brought in relation to public participation. This support could, for example, take the form of providing information relevant to the case, intervening in favour of the defendant in the court proceedings or any other form as provided for in national law. The conditions under which non-governmental organisations could support the defendant and the procedural requirements for such support, such as time limits where appropriate, should be governed by national law.**



(26) To provide the defendant with an additional safeguard, there should be ~~the~~ a possibility to grant him or her a security to cover ~~procedural~~ **the estimated costs of the proceedings and/or, where applicable, the estimated costs of the proceedings and damages.**, ~~when the court considers~~ **However, it is necessary to strike a balance between that measure and the claimant's right of access to justice.** ~~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.~~ **The court or tribunal seized may consider it appropriate for the claimant to provide a security if there are elements that indicate that the proceedings are abusive or if there is the risk of the defendant not being reimbursed or with regard to the economic situation of the parties or other such criteria laid down in national law.** A security does not entail a judgement on the merits but serves as a precautionary measure ~~to ensuring~~ **the effects of a final decision finding an abuse of procedure and which covers the costs or, if provided for in national law, the costs and potential damage caused to the defendant, particularly where there is a risk of irreparable harm.** 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.

**(26a) The decision that grants early dismissal should be a decision on the merits, after appropriate examination. Member States should adopt new rules or apply existing rules under national law so that the court or tribunal can decide whether to dismiss manifestly unfounded cases as soon as it has received the necessary information in order to substantiate the decision. Such a dismissal should take place at the earliest possible stage in the proceedings but that moment could occur at any time during the proceedings depending on when the court has received such information, in accordance with national law. Where the defendant has applied for the dismissal of the claim as manifestly unfounded, the court or tribunal should deal with that application in an accelerated manner in accordance with national law in order to expedite the assessment of whether the claim is manifestly unfounded, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial. The possibility to grant an early dismissal does not preclude the application of national rules which enable national courts or tribunals to assess admissibility of an action even before the proceedings are initiated.**

~~(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.~~

- ~~(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.~~
- (29) To ensure ~~high expediency in the accelerated procedure on an~~ **that an** application for early dismissal **is treated in an accelerated manner**, 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 **endeavour** ~~make efforts~~ to ensure that ~~where~~ **when** the defendant **applies** ~~has applied~~ for other procedural safeguards, the decision is also taken in an ~~expeditious~~ **accelerated** 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.~~
- ~~(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.~~
- (30a) A decision granting early dismissal should be subject to appeal. A decision refusing early dismissal could also be subject to appeal in accordance with national law.**

- (31) **Where the court has found the proceedings to be abusive, c**Costs should include all types of 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.~~ **The court should render the decisions on costs in accordance with national law.** Full compensation of damages should include both material and immaterial damages, such as physical and psychological harm.
- (32) The main objective of giving courts or tribunals the possibility to impose penalties **or other appropriate measures** is to deter potential claimants from initiating abusive court proceedings against public participation. **Other appropriate measures could, for example, if provided for in national law, be damages or the publication of the court decision.** **Where the court has found the proceedings to be abusive, s**Such penalties or measures should be proportionate to the elements of abuse identified. ~~When establishing amounts for penalties, courts and~~ 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 threaten the defendant.~~ **It would be for the Member States to decide how any monetary amounts should be paid.**

- (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 **the right to** 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. **Member States may choose whether to refuse the recognition and enforcement of a third-country judgment as manifestly contrary to public policy (ordre public) or on the basis of a separate refusal ground.**
- (34) This Directive creates a new special ground of jurisdiction in order to ensure that targets of SLAPPs domiciled in the European Union have an efficient remedy available in the Union against abusive court proceedings brought in a court or tribunal of a third country **by a claimant domiciled outside the Union. It applies irrespective of a decision being rendered or being final, as targets of SLAPPs can suffer damages and incur costs since the start of the court proceedings and possibly without any decision being rendered, such as in the case of a withdrawal. However, Member States may decide to limit the exercise of the jurisdiction while proceedings are still pending in the third country, in accordance with national law, for example by providing for a stay of the proceedings in the Member State.** This special ground of jurisdiction allows the targets domiciled in the European Union to seek, in the courts or tribunals of their domicile, ~~for~~ compensation of damages and costs incurred in connection with the proceedings before the court or tribunal of the third country. ~~This right applies irrespective of the domicile of the claimant in the proceedings in the third country.~~ **It is aimed to act as a deterrent against abusive court proceedings brought in third countries against persons domiciled in the European Union and can be enforced, for example, where a claimant domiciled outside the Union has assets in the European Union. This provision does not deal with applicable law nor with substantive law on damages as such.**

- (35) This Directive should be without prejudice to the protection that other instruments of Union law or **provisions of national law that establish more favourable rules**, provide ~~for~~ natural and legal persons that engage in public participation. In particular, **this Directive does not intend to reduce or restrict rights such as the right to freedom of expression and information, nor does it intend ~~it does not to~~** detract in any way from the protection offered by Directive 2019/1937 on the protection of persons who report breaches of Union law<sup>6</sup>, as implemented in national law. As regards situations **that falling** within the scope of this Directive and of Directive 2019/1937, the protection offered by both acts should ~~therefore~~ apply. **More favourable provisions may include national provisions that establish more effective procedural safeguards, such as a liability regime relating to the right to freedom of expression and information.**
- (36) ~~This Directive is complementary to~~ **T**he 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 ~~for~~ targets of abusive court proceedings and data collection, **and the** reporting and monitoring of court proceedings against public participation.

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<sup>6</sup> OJ L 305, 26.11.2019, p. 17–56.

- (36a) This Directive complies with the protection of the fundamental rights and observes the principles recognised by the Charter and the fundamental rights constituting general principles of Union law. Accordingly, this Directive should be interpreted and implemented in accordance with those fundamental rights, including the right to freedom of expression and of information, as well as the rights to an effective remedy, to a fair trial and to access to justice. When implementing this Directive, all public authorities involved should achieve, in situations where the relevant fundamental rights conflict, a fair balance between the rights concerned, in accordance with the principle of proportionality.**
- (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.
- ~~(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~~
- (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 **6 July 2022**...,] its wish to take part in the adoption and application of this Directive.]

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

**General provisions**

*Article 1*

**Subject matter**

This Directive provides safeguards against manifestly unfounded **claims** 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.

*Article 2*

**Scope**

1. This Directive shall apply to matters of a civil or commercial nature with cross-border implications **entertained in civil proceedings**, 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 sState for acts and omissions in the exercise of sState authority (*acta iure imperii*). **This Directive shall not apply to criminal matters or arbitration and shall be without prejudice to criminal procedural law.**



- 1a. **This Directive lays down minimum rules, thus enabling the Member States to adopt or maintain provisions more favourable to persons engaged in public participation, including national provisions establishing more effective procedural safeguards relating to the right to freedom of expression and information.**

*Article 3*

**Definitions**

For the purposes of this Directive, the following definitions shall apply:

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;~~
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:
  - (a) **fundamental rights**, public health, safety, the environment, ~~or climate or enjoyment of fundamental rights;~~
  - (b) activities of a ~~person or entity in the public eye or of public interest~~ **figure**;

- (c) matters under ~~public consideration or review~~ by a legislative, executive, or judicial body, or any other ~~public~~ official proceedings;
- (d) allegations of corruption, fraud or **other criminal offences**;
- (e) activities aimed ~~at~~ **fighting** disinformation;
3. **‘abusive court proceedings against public participation’** mean court proceedings brought in relation to public participation that **have as their main purpose the prevention, restriction or penalisation of public participation and are which pursue unfounded claims** 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:
- (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof, **including the excessive dispute value**;
- (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
- (c) intimidation, harassment or threats on the part of the claimant or his or her representatives.

*Article 4*

**Matters with cross-border implications**

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.
2. — Where both parties to the proceedings are domiciled in the same Member State as the court seised the matter shall also be considered to have cross-border implications if:
  - (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
  - (b) — the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State.

## CHAPTER II

# Common rules on procedural safeguards

### Article 5

#### Applications for procedural safeguards

1. Member States shall ensure that where court proceedings are brought against natural or legal persons on account of their engagement in public participation, those persons can apply, **in accordance with national law**, for:
  - (a) security **as provided for** in ~~accordance with~~ Article 8;
  - (b) early dismissal of manifestly unfounded court proceedings **claims as provided for in** ~~accordance with~~ Chapter III;
  - (c) remedies against abusive court proceedings **as provided for** in ~~accordance with~~ Chapter IV.
2. ~~Such applications shall include:~~
  - (a) ~~a description of the elements on which they are based;~~
  - (b) ~~a description of the supporting evidence.~~
3. Member States may provide that measures on procedural safeguards **as provided for in** ~~in~~ ~~accordance with~~ Chapters III and IV can be taken by the court or tribunal seised of the matter *ex officio*.

*Article 6*

**Subsequent amendment to claim or pleadings**

Member States shall ensure that **in court proceedings brought against natural or legal persons on account of their engagement in public participation** any subsequent amendments to the claims or the pleadings made by the claimant ~~in the main proceedings~~, including the ~~withdrawal~~ ~~discontinuation of proceedings~~ ~~claims~~, do not affect the possibility ~~for the court or tribunal seised of the matter to consider the court proceedings abusive and for the defendant to apply for to impose remedies in accordance with~~ **provided for in Chapter IV, in accordance with national law. This is without prejudice to Article 5(3).**

*Article 7*

~~Third party intervention~~ **Support for the defendant in court proceedings**

Member States shall ~~take the necessary measures to ensure that a court or tribunal seised of court proceedings~~ **brought against natural or legal persons on account of their engagement in public participation** may accept that non-governmental organisations ~~safeguarding or promoting the rights of persons engaging in public participation may take part~~ **support** ~~in those proceedings, either in support of the defendant in those proceedings in accordance with national law or to provide information.~~

## *Article 8*

### **Security**

Member States shall ensure that in court proceedings **brought** against **natural or legal persons on account of their engagement in** public participation, the court or tribunal seised ~~has the power to~~ **may require, without prejudice to the right of access to justice, that** the claimant ~~to~~ provides security for **the costs of the proceedings** procedural costs, or, **if provided for in national law,** for **the costs of the proceedings** procedural costs and damages, if it considers such security appropriate ~~in view of presence of elements indicating abusive court proceedings.~~

## CHAPTER III

### **Early dismissal of manifestly unfounded ~~court proceedings~~ claims**

## *Article 9*

### **Early dismissal**

1. Member States shall ~~empower~~ **ensure that** courts and tribunals ~~may to adopt an early decision to dismiss,~~ **after appropriate examination,** ~~in full or in part,~~ court proceedings **claims** against public participation as manifestly unfounded **at the earliest possible stage, in accordance with national law.**

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.~~

**Member States shall ensure that an application for early dismissal is treated in an accelerated manner in accordance with national law, taking into account the circumstances of the case and the right to an effective remedy and the right to a fair trial.**

*Article 10*

**Stay of the main proceedings**

~~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.~~

*Article 11*

**Accelerated procedure**

~~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 the right to a fair trial.~~

*Article 12*

**~~Burden of proof~~Substantiation of claims**

Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to **substantiate the claim in order to enable the court to assess whether it is** ~~prove that the claim is not manifestly unfounded.~~

*Article 13*

**Appeal**

Member States shall ensure that a decision ~~refusing or~~ granting early dismissal pursuant to Article 9 is subject to an appeal.

CHAPTER IV

**Remedies against abusive court proceedings**

*Article 14*

**Award of costs**

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 types of~~ costs of the proceedings **available under national law**, including the ~~full~~ costs of legal representation, incurred by the defendant, ~~unless such costs are excessive.~~



*Article 15*

**Compensation of damages**

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.

*Article 16*

**Penalties and or other appropriate measures**

Member States shall ~~provide~~ **ensure** that courts or tribunals seised of abusive court proceedings against public participation ~~have the possibility to~~ **may** impose effective, proportionate and dissuasive penalties **or other appropriate measures** on the party who brought those proceedings.

## CHAPTER V

# Protection against third-country judgments

### *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~~ **against** public participation by a 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~~ **are** considered manifestly unfounded or abusive if they had been brought before the courts or tribunals of **according to the law of** the Member State **in which** where recognition or enforcement is sought ~~and those courts or tribunals would have applied their own law.~~

*Article 18*

**Jurisdiction for actions ~~against~~ related to third-country judgments ~~proceedings~~**

1. Member States shall ensure that, where abusive court proceedings ~~on account of engagement~~ ~~in~~ **against** public participation have been brought **by a claimant domiciled outside the Union** in a court or tribunal of a third country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where he is domiciled, compensation ~~for~~ of the damages and the costs incurred in connection with the proceedings before the court or tribunal of the third country, ~~irrespective of the domicile of the claimant in the proceedings in the third country.~~
2. **Member States may limit the exercise of the jurisdiction while proceedings are still pending in the third country.**

## CHAPTER VI

### Final provisions

#### *Article 19*

#### **Relations with bilateral and multilateral ~~the 2007 Lugano c~~ Conventions and agreements**

This Directive shall not affect the application of ~~the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters~~ **bilateral and multilateral conventions and agreements between a third State and the Union or a Member State concluded before the date of entry into force of this Directive, signed in Lugano on 30 October 2007.**

#### *Article 20*

#### **Review**

Member States shall provide the Commission with ~~all relevant information~~ **the available data** regarding the application of this Directive by ... [~~five~~ *5 years from the date of transposition*]. On the basis of the information provided, the Commission shall by ... [~~six~~ *6 years from the date of transposition*] at the latest, submit to the European Parliament and the Council a report on the application of this Directive. The report shall provide an assessment of the evolution of abusive court proceedings against public participation and the impact of this Directive in the Member States. If necessary, the report shall be accompanied by proposals to amend this Directive.

*Article 21*

**Transposition into national law**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [~~2~~**three** years from the date of entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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.

*Article 22*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 23*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*