



European Parliament

LEGISLATIVE TRAIN 06.2023

6 A NEW PUSH FOR EUROPEAN DEMOCRACY

INITIATIVE AGAINST ABUSIVE LITIGATION TARGETING JOURNALISTS AND RIGHTS DEFENDERS

[DEPARTED]

>  EUROPEAN DEMOCRACY ACTION PLAN

CONTENT

Responding to repeated calls from the Parliament, in April 2022, the Commission put forward a proposal for a directive on abusive litigation targeting journalists and rights defenders, based on Article 81(2)(f) of the Treaty on the Functioning of the European Union. The scope of the proposal is limited to cross-border civil proceedings.

Within Parliament, the proposal is dealt with by the Legal Affairs (JURI) Committee as lead committee, with the Civil Liberties, Justice and Home Affairs (LIBE) Committee associated under Rule 57 RoP.

The European Economic and Social Committee issued an Opinion on the proposal on 26 October 2022.

The JURI rapporteur presented his draft report on 2 March 2023. Proposed amendments include specifying the definition of abusive court proceedings and matters of public interests, extending the the scope of application by providing a broader definition of matters with cross-border implications. It seeks to oblige Member States to provide victims of SLAPPs with access to support measures, including comprehensive information, legal aid and financial assistance, and to ensure full coverage of the costs of legal representation in cases of abusive lawsuits against public participation. The draft report also proposes to create a public Union register including all relevant SLAPP cases dealt by EU jurisdictions. It also proposes to modify the Brussels I Regulation, making the domicile of the defendant the sole forum in defamation cases in which the victim is a private person, and to modify the Rome II Regulation, in order to ensure that the law applicable to SLAPP cases is the law of the place to which the publication was directed to.

A total of 281 amendments were tabled by Members, which are to be voted in committee on 27 June 2023. An indicative date for a plenary debate on the file, with view to approving the mandate for trilogue negotiations, is foreseen for 10 July 2023.

The LIBE committee delivered its opinion on 23 May 2023. It proposed a number of amendments, including:

- to specify the scope of the directive by clearly indicating human rights, environmental, women's and LGBTIQ+ rights defenders, NGOs, activists, trade unions, artists, researchers, academics, bloggers, whistleblowers
- to introduce a minimum harmonisation clause
- to expand the definition of public participation by clearly indicating areas of such participation as covering freedom of

association and assembly, freedom of press, academic and artistic freedom, freedom of science and culture, the right of collective bargaining and action, the right to an effective remedy or the right to good administration

- to clarify that all forms of activity are covered, including any activity regardless of the nature, medium or format, which serves the exercise of public scrutiny, disclosure, dissemination or promotion of information to the public, any forms of creation, exhibition, advertisement or other promotion of journalistic, political, scientific, academic, artistic, commentary or satirical communications, publications or works, as well as any supporting or preparatory activities
- to include allegations of embezzlement, money laundering, extortion, coercion, sexual harassment and gender based violence, or other forms of intimidation, or any other criminal or administrative offence including environmental crime;
- to include activities aimed at protecting EU Values (Article 2 TEU)
- to clarify the definition of 'abusive court proceedings against public participation' as those abusive court proceedings against public participation' mean court proceedings brought in relation to public participation that make use of the judicial process for purposes other than genuinely asserting, vindicating or exercising a right and have as their main purpose to prevent, restrict or penalize public participation; the definition would be accompanied by concrete examples
- to empower courts to dismiss abusive court proceedings, without having to prove that they are manifestly unfounded
- to include a rule whereby the defendant may apply for a dismissal at any stage of the proceedings, including - where national civil procedural law systems foresee a separate admissibility stage - also at that stage.

In the Council, the Justice and Home Affairs configuration is in charge of the proposal and the first policy debate took place on 9 December 2022. Member States generally showed their agreement with the main goal pursued by the proposal, but they also flagged that the procedural safeguards incorporated therein should not be abused and that the claimant's access to justice should be ensured. On 9 June 2023, the Council (Justice and Home Affairs) approved a General Approach (GA) which will be the basis for trilogue negotiations with Parliament. The main changes in the GA in comparison to the text of the proposal include:

- a minimum harmonisation clause, allowing for higher level of protection
- modified definition of abusive court proceedings as "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"
- removal of definition of cross-border cases (Art. 4)
- new rule requiring that Member States must 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
- removal of rule on damages (Art. 15)
- provision that the Directive shall not affect the application of 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 (and not only the Lugano Convention).

References:

- Legislative observatory: Protection of persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), [2022/0117\(COD\)](#).
- European Commission, [Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings \("Strategic lawsuits against public participation"\)](#), SWD(2022) 117 final
 - European 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"), [SWD\(2022\) 117 final](#).
- European Commission, [Recommendation on the protection, safety and empowerment of journalists](#), 16 September 2021, C(2021) 6650 final.
- European Parliament, [Draft report on the proposal for a directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings \("Strategic lawsuits against public participation"\)](#), 2 March 2023.
- European Parliament, Resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society, [2021/2036\(INI\)](#)
 - European Parliament, [Resolution on strengthening media freedom: the protection of journalists in Europe, hate speech, disinformation and the role of platforms](#), [2020/2009\(INI\)](#)
 - European Parliament, [Resolution of 3 May 2018 on Media pluralism and media freedom in the European Union](#), 2017/2209(INI)
 - European Economic and Social Committee, [Opinion on the Initiative against abusive litigation targeting journalists and rights defenders](#), SOC/734-EESC-2022.

Further Reading:

- European Parliament, European Parliamentary Research Service, [Strategic lawsuits against public participation \(SLAPPs\)](#), September 2022.
- European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, [The Use of SLAPPs to Silence Journalists, NGOs and Civil Society](#), 2021.
- European Parliament, [Policy Department for Citizens' Rights and Constitutional Affairs, Safety of journalists and the fighting of corruption in the EU](#), July 2020.
- Eu-Citizen: Academic Network on European Citizenship Rights, [SLAPP in the EU context](#), 29 May 2020.
- Centre for Media Pluralism and Media Freedom, [Media pluralism monitor](#), 2020, 2021, and 2022.

Related legislative train carriages:



- [European Democracy Action Plan](#)
- [European Media Freedom Act](#)
- 2014-2019 [Media freedom and pluralism](#)

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