# PROTECTING PUBLIC WATCHDOGS ACROSS THE EU:
# A PROPOSAL FOR AN EU ANTI-SLAPP LAW

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# A CALL FOR ACTION

This paper was drafted[1] at the initiative of a coalition of non-governmental organisations from across Europe that have been working together over the past years to raise awareness and urge policy makers to protect public watchdogs such as journalists, rights defenders, activists and whistleblowers from Strategic Lawsuits Against Public Participation (SLAPPs). [2]

SLAPP suits are a form of legal harassment. Pursued by law firms on behalf of powerful individuals and organisations who seek to avoid public scrutiny, their aim is to drain the target's financial and psychological resources and chill critical voices to the detriment of public participation.

Currently, no EU country has enacted targeted rules that specifically shield against SLAPP suits. EU-wide rules providing for strong and consistent protection against SLAPP suits would mark a crucial step forward towards ending this abusive practice in EU Member States and serve as a benchmark for countries in the rest of Europe and beyond. Together with other legislative and non-legislative measures, it would contribute to secure a safer environment for public watchdogs and public participation in the EU.

This is why civil society has engaged a wide range of experts including academics, lawyers, practitioners, SLAPP targets and policy and advocacy specialists, to look into the value added, the feasibility and the key components of possible EU anti-SLAPP legislation.

This paper is the result of this collaborative work: a model EU anti-SLAPP law proposing a set of rules which, if in place, would make sure that in each EU country SLAPPs are dismissed at an early stage of proceedings, SLAPP litigants pay for abusing the law and

1 This paper was authored by an expert working group composed of dr. Linda Maria Ravo, expert consultant to the Civil Liberties Union for Europe (Lead Author and Principal Investigator), dr. Justin Borg-Barthet, Senior Lecturer, Centre for Private International Law, University of Aberdeen (Co-Investigator) and Prof. dr. Xandra Kramer, professor at Erasmus School of Law, Erasmus University Rotterdam and at the Faculty of Law, Economics and Governance of Utrecht University (Co-Investigator). The authors are thankful to specialist practitioners and scholars who acted as peer reviewers of the text. The usual disclaimer applies.

2 The initiative was financially supported by Article 19, the Civil Liberties Union for Europe, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Free Press Unlimited, Greenpeace European Unit, the International Press Institute, NGO Shipbreaking Platform, Pen International and Reporters Without Borders.

the courts, and SLAPP targets are given means and assistance to defend themselves.

As democracy and the rule of law come increasingly under pressure in a number of EU countries, this paper supports the call on EU policymakers by the undersigned organisations to urgently put forward an EU anti-SLAPP Directive to protect public watchdogs that help hold the powerful to account and keep the democratic debate alive.

## *Signatories*

- ARTICLE 19
- Articolo21, liberi di...
- Association of European Journalists (AEJ)
- Association of European Journalists (AEJ-Belgium)
- Associazione Stampa Romana
- Bulgarian Helsinki Committee (BHC)
- Centre for Peace Studies
- Civil Liberties Union for Europe (Liberties)
- Civil Rights Defenders
- Civil Society Europe
- Committee to Protect Journalists (CPJ)
- The Daphne Caruana Galizia Foundation
- D.i.Re Donne in rete contro la violenza, Italy (network of women's crisis centres)
- Earth League International (ELI)
- EUobserver
- European Center for Not-for-Profit Law (ECNL)
- European Centre for Press and Media Freedom (ECPMF)
- European Civic Forum
- European Environmental Bureau (EEB)
- European Federation of Journalists (EFJ)
- FIDH (International Federation for Human Rights), within the framework of the Observatory for the Protection of Human Rights Defenders
- Forum Trentino per la Pace e i Diritti Umani
- FNSI, Federazione Nazionale Stampa Italiana (The Union of Italian Journalists)
- Free Press Unlimited (FPU)
- Global Forum for Media Development (GFMD)
- Greenpeace EU Unit

- Government Accountability Project
- Guardian News and Media Limited
- Human Rights Centre "Antonio Papisca", University of Padova, Italy
- Human Rights Centre Ghent University
- Human Rights House Foundation (HRHF)
- Hungarian Civil Liberties Union (HCLU)
- Hungarian Helsinki Committee (HHC)
- IFEX
- ILGA-Europe (European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association)
- Index on Censorship
- International Media Support (IMS)
- International Press Institute (IPI)
- Italian Coalition for Civil Liberties and Rights (CILD)
- Justice and Environment (J&E)
- Legal Human Academy
- Media Defence
- Media Diversity Institute (MDI)
- Media Freedom Rapid Response (MFRR)
- Mighty Earth
- NGO Shipbreaking Platform
- OMCT (World Organisation Against Torture), within the framework of the Observatory for the Protection of Human Rights Defenders
- Open Society Initiative for Europe
- Organized Crime and Corruption Reporting Project (OCCRP)
- Osservatorio Balcani Caucaso Transeuropa (OBCT)
- Ossigeno per l'informazione
- Oživení
- PEN International
- Pištaljka
- Platform for Independent Journalism (P24)
- Reporters Without Borders (RSF)
- Rights International Spain (RIS)
- Sindacato Cronisti Romani (Regional Journalists' Union, Italy)
- Sindacato Giornalisti del Trentino-Alto Adige/Südtirol (Regional Journalists' Union, Italy)
- South East Europe Media Organisation (SEEMO)

- SpeakOut SpeakUp Ltd (United Kingdom)
- The Good Lobby
- Towarzystwo Dziennikarskie, Poland (Society of Journalists)
- Transparency International EU
- Umweltinstitut München
- UNESCO Chair "Human Rights, Democracy and Peace", University of Padova
- Whistleblowing International Network

# EXPLANATORY MEMORANDUM

## WHAT ARE SLAPP SUITS?

The term SLAPP stands for Strategic Lawsuits Against Public Participation. It was coined by American scholars in the 1990s[3] to indicate lawsuits filed by powerful subjects (e.g. a corporation, a public official, a high-profile businessperson) against individuals or organisations expressing critical positions on a public matter – for example, an issue of general political interest or social significance.

Targets of SLAPP suits can be sued for expressing critical views on the behaviour, or denouncing wrongdoings, of corporates or authorities through publications, leaflets, artworks or other online or offline forms of expression, or in retaliation for their involvement in campaigns, judicial claims, actions or protests. Research shows that SLAPP suits target a wide range of actors.[4] Journalists, human rights defenders, academics, and civil society organisations are among those who are most often targeted.[5] This is not surprising considering the important function these actors play, in transmitting knowledge, information, ideas and opinions on issues of public interest, as also consistently recognised in human rights jurisprudence. [6]

In practice, SLAPP suits concretise in a variety of legal actions, of a civil or even criminal nature. Whatever the object and type of action, the aim of a SLAPP suit is not to genuinely assert a right. SLAPP suits are often based on meritless, frivolous or exaggerated claims and are deliberately initiated with the intent to intimidate, drain the financial and psychological resources of their targets, rather than genuinely exercising or vindicating a right or obtaining a redress for a certain wrong. They are tactically carried out to make the litiga-

3 George W. Pring, Penelope Canan, SLAPPs: Getting Sued for Speaking Out (1996).

4 George W. Pring, SLAPPs: Strategic Lawsuits against Public Participation (1989).

5 See for example the cases collected by the Public Participation Project, SLAPP stories and, in the EU context, the examples compiled in the report published by Greenpeace European Unit, Sued into silence. How the rich and powerful use legal tactics to shut critics up (2020).

6 See among others, on the role of journalists, the cases ruled by the ECtHR, Axel Springer v Germany (2012) and Haldimann and Others v. Switzerland (2015). On the role of organisations, see ECtHR, McDonald's Corporation v Steel & Morris (1997).

tion expensive, long-lasting and complicated for the defendants, with the ultimate goal of discouraging and silencing them, and exert a chilling effect on other potential critics.

SLAPP suits are, in essence, attempts to abuse the law and the courts to undermine the right of individuals or organisations to engage in public participation by expressing their views on issues of public interest. As such, SLAPP suits constitute a serious threat for the exercise of human rights and fundamental freedoms such as freedom of expression, freedom of association and the right to protest. These are essential tools that allow individuals to participate in their democracies. SLAPPs thus have, in turn, a severe chilling effect on democratic debate and participation.[7]

## SLAPP SUITS IN THE EU

According to a recent study commissioned by the European Commission, SLAPP suits are "increasingly used across EU Member States, in an environment that is getting more and more hostile towards journalists, human right defenders and various NGOs".[8]

While an insufficient awareness of the issue among EU and national policymakers has prevented a regular and comprehensive mapping of SLAPP suits, and their effects, across the EU, a rising number of SLAPP suits or threats thereof have been exposed in recent years by non-governmental organisations.[9] When Maltese journalist Daphne Caruana Galizia was killed in 2017, she was reportedly facing 47 civil and criminal defamation lawsuits from an array of business people and politicians, brought by multiple law firms.[10] Several SLAPP threats and suits have been reported in the past years across the whole EU. Countries where prominent cases occurred include Bulgaria, Belgium, France, Italy, Poland, Portugal, Romania, Slovenia, Spain. Among the most emblematic SLAPP suits against journalists, there are for example a criminal complaint against the EUObserver, a law-

7 Penelope Canan, The SLAPP from a sociological perspective (1989).

8 Petra Bárd, Judit Bayer, Ngo Chun Luk and Lina Vosyliute, SLAPP in the EU context (2020).

9 See, for example, the alerts published on the Council of Europe Platform to promote the protection of journalism and the safety of journalists or the cases illustrated in reports by civil society such as Greenpeace European Unit, SLAPPs: How the rich and powerful use legal tactics to shut critics up, cited.

10 The Guardian, Murdered Maltese reporter faced threat of libel action in UK (2018).

suit claiming €1 million in damages against two Newsweek Poland journalists[11], and a barrage of 39 vexatious defamation lawsuits targeting journalists working for a Slovenian investigative news website.[12] Many SLAPP suits are also being brought against human rights defenders. Paradigmatic cases include the €1 million claim for damages brought by Spanish meat producer Coren against the environmental activist Manuel García, who had exposed the company's illegal livestock waste management practices; or a defamation case initiated by the construction company VINCI in France against the NGO Sherpa which denounced human right violations reportedly committed by the company's Qatari subsidiary.[13] According to the above mentioned study carried out for the European Commission, cases "show that SLAPP and other methods to suppress public participation are alive and threaten democracy within the EU"[14].

As in other parts of the world, SLAPP suits in the EU take many forms. The reality of SLAPP cases brought across the Member States reflects the picture already outlined by well-established research, according to which legal claims on which SLAPP suits are based most typically include defamation but can also concretise in other legal grounds including torts, labour law, injunctions, etc. The abuse of substantive laws is often accompanied by the abuse of procedural rules to prolong the procedure and make it more burdensome on defendants.[15] Research shows that SLAPP suits brought in EU Member States are mostly civil and commercial lawsuits, including actions for damages brought in connection with criminal defamation complaints.[16] Cases are brought by private individuals and entities but also by public officials, public bodies and publicly controlled entities.

11 As related by Jessica Ní Mhainín, To save European journalism, we need an anti-SLAPPS Directive (2020).

12 International Press Institute, Slovenian investigative news outlet Necenzurirano hit with 39 SLAPP lawsuits (2020).

13 Greenpeace European Unit, Sued into silence. How the rich and powerful use legal tactics to shut critics up, cited.

14 Petra Bárd, Judit Bayer, Ngo Chun Luk and Lina Vosyliute, SLAPP in the EU context, cited.

15 See in general George W. Pring, Strategic Lawsuits Against Public Participation (SLAPPs) - Protecting Property or Intimidating Citizens (1989) as well as, as regards the EU specifically, Petra Bárd, Judit Bayer, Ngo Chun Luk and Lina Vosyliute, SLAPP in the EU context, cited.

16 See for example Index on Censorship, A gathering storm - The laws being used to silence the media (2020), as well as Petra Bárd, Judit Bayer, Ngo Chun Luk and Lina Vosyliute, SLAPP in the EU context, cited.

While anti-SLAPP statutes exist in several states across the world[17], no EU Member State has so far enacted targeted rules to provide protection against SLAPP suits.

On the merits, the need to strike a fair balance between the claimant's and the defendant's fundamental rights, which derives from Member States' constitutions and their obligations under the EU Charter of Fundamental Rights and the European Convention on Human Rights, will normally lead courts to dismiss claims which qualify as SLAPP suits. The typical markers of SLAPP suits include, first, the relevance of the defendant's conduct to the exercise of fundamental rights and freedoms (such as freedom of expression, of assembly or the right to access to justice) in connection with a public interest. This exposes the chilling effect which the claim has or may potentially have on that or other forms of public participation. Secondly, SLAPP suits are characterized by elements which variably point to the abusive nature of the claim, exposing a use of the judicial process for purposes other than genuinely asserting, vindicating or exercising a right, but rather that of intimidating, depleting or exhausting the resources of the defendant. These elements are bound to favour the defendant's right to an effective remedy and the other fundamental rights the exercise of which gave rise to the claim (for example, freedom of expression) over the claimant's right to access to a court and the other fundamental rights of which he or she may claim the violation (such as the protection of one's reputation).[18]

However, the absence of specific procedural safeguards makes national judicial systems vulnerable to SLAPPs and leaves SLAPP targets without sufficient protection. Targets of SLAPP suits in the Member States may just rely on existing norms of general or sectorial application, such as provisions on damages and costs and safeguards against abusive practices such as vexatious, frivolous or excessive claims. But a dismissal which comes after a full examination of the merits of the case or the mere application of the loser pays principle are of no use to prevent a SLAPP suit's harmful and chilling effects. The lack of a consistent and comprehensive legal and judicial approach does not allow to promptly detect and effectively address this particular type of abusive lawsuits, which clearly warrant strengthened safeguards

17 Anti-SLAPP statutes are particularly developed in the states of the United States, Australia and Canada. A comprehensive comparative overview of their main features is included in a study carried out by Ecojustice and the Canadian Environmental Law Association, Breaking the Silence (2010).

18 This is exemplified in the jurisprudence of the European Court of Human Rights (ECtHR) as regards freedom of expression - see to that effect the landmark cases Sunday Times v UK (1979), Lingens v Austria (1986), Thorgeir Thorgeirson v. Iceland (1992), Jersild v. Denmark (1994), McDonald's Corporation v Steel & Morris (1997), Bladet Tromsø v. Norway (1999).

in view of their impact on the exercise of human rights and fundamental freedoms and on public participation. In addition, the level of protection remains very fragmented across Member States and uneven across policy areas, frustrating legal certainty and SLAPP targets' right to an effective remedy.

The consequences of this gap in protection are further amplified in the EU context in the light of the legal framework regulating defamation (which is at the origin of the majority of SLAPP cases in the EU). On the one hand, SLAPPs' chilling effect is coupled with the fact that in most Member States defamation still constitutes a criminal offence, despite repeated calls for decriminalization by human rights monitoring bodies including the Council of Europe.[19] On the other hand, when it comes to civil defamation lawsuits, the differences among Member States in substantive and procedural law are leveraged by SLAPP litigants to their advantage, making the system particularly prone to abuse. As relevant rules of EU private international law applicable to civil and commercial matters currently stand, baseless civil defamation suits can easily be brought in national jurisdictions and under Member States' laws having only a tenuous connection to a case, just to take advantage of greatest chances offered by such jurisdictions and laws of achieving the desired result (making the litigation procedure the most burdensome for the defendant).[20]

## AN EU PROBLEM TO BE ADDRESSED THROUGH EU WIDE RULES

Not only SLAPP suits are an EU wide issue, common across all Member States; they represent a threat to the EU legal order and need as such to be addressed by the EU legislator.

First of all, SLAPP suits are a direct attack to the exercise of fundamental rights such as freedom of expression, freedom of information, freedom of assembly and freedom of association. These are essential tools that allow individuals to participate in their democracies.

19 See Council of Europe, Overview of guidelines and activities addressing the issue of defamation in relation to freedom of expression.

20 Indeed, the reform of the Brussels Ia and the Rome II Regulations has long been advocated as another, complementary measure to counter SLAPP suits in the EU. Such reform should be aimed at grounding jurisdiction in the courts of the place the defendant's domicile and to introduce predictable choice of law formulae for defamation cases. For a comprehensive legal analysis of the matter, see Justin Borg-Barthet, The Brussels Ia Regulation as an Instrument for the Undermining of Press Freedoms and the Rule of Law: an Urgent Call for Reform (2020). Similar findings are confirmed in the study commissioned by the European Commission, Petra Bárd, Judit Bayer, Ngo Chun Luk and Lina Vosyliute, SLAPP in the EU context, cited.

They thus have a severe chilling effect on democratic participation[21] and are at odds with the basic tenets of the EU's understanding of the concept of democracy. Insofar as they constitute an abuse of the law and of the courts, SLAPP suits also hinder the enjoyment of the right to an effective remedy for defendants in such disputes. Tolerating this practice thus goes against the values which lie at the foundation of the EU in accordance with Article 2 of the Treaty on European Union (TEU), that include democracy, the rule of law and respect for human rights. EU wide rules providing uniform protection against SLAPP suits would make sure that all Member States apply the same standards when dealing with this phenomenon in line with their obligation to fully uphold the values enshrined in Article 2 TEU.

Secondly, providing for a high level of protection against SLAPP suits across the EU would substantively contribute to the proper functioning of the internal market, for the following reasons.

The existence of strong safeguards in all Member States providing protection against SLAPP suits is necessary to tackle the threats that this abusive practice poses to the enforcement of EU law. As already recognised by the EU legislator in relation to the protection of whistle-blowers[22], publicly exposing threats or harm to the public interest is one upstream component of enforcement of EU law and policies. Similar to whistle-blowers reports, the disclosure, dissemination and promotion of information, ideas and opinions on matters of public interest by individuals or organisations engaging in public participation contributes to the detection, investigation and prosecution of breaches of the law, including EU law. Their aim and effect being primarily that of dissuading engaged individuals and organisations from freely expressing views on matters of public interest, SLAPP suits frustrate the flow of information which can serve to inform the enforcement of EU rules by the European Commission and competent national authorities. For the same reason, SLAPP suits hinder the effective legal protection of rights under EU law, which Member States shall ensure pursuant to Article 19 TEU.[23] Indeed, public

21 Penelope Canan, The SLAPP from a sociological perspective (1989).

22 Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law (2019).

23 This is also one of the findings of the recent report by the EU Agency for Fundamental Rights (FRA), Business and human rights – access to remedy, where FRA identifies protection against SLAPPs as an urgent and necessary measure to ensure an effective access to a remedy for victims, given the role of individuals and NGOs in bringing cases against or monitoring business activity and its impact on fundamental rights.

participation is a key tool to help rights holders to exercise vigilance to protect their rights, and demand legal protection in case of breach.

In addition, SLAPP suits can threaten the effectiveness of EU law. Research shows that such lawsuits in the EU are sometimes construed on abusive interpretations of EU provisions, such as rules on data protection and intellectual property, going against the intentions of the EU legislator.[24] EU wide rules deterring and providing protection against SLAPP suits would therefore contribute to secure the correct and uniform application of EU law across the Member States.

A uniform protection from strategic lawsuits against public participation also would have a direct beneficial impact on the enjoyment of internal market freedoms by individuals and organisations most vulnerable to such claims: journalists, media outlets and civil society organisations would in fact be able to operate more confidently across the EU if the same level of protection against SLAPP suits were provided in all Member States' jurisdictions. In addition, it could contribute to a more effective functioning of national justice systems, which are negatively affected by such improper use of the judicial process.

Finally, introducing EU rules providing harmonised protection against SLAPP suits in all Member States would strengthen the effectiveness, fairness and coherence of the EU space of judicial cooperation. Indeed, SLAPP suits in the EU can easily be construed as cross-border disputes. Those cross-border elements are taken advantage of for forum shopping, as plaintiffs make use of applicable rules of private international law to select the jurisdiction where the likelihood of achieving the desired result is the greatest instead of the one that has the closest connection to the dispute. While reflections are ongoing on the reform of relevant private international law instruments, and in particular the Brussels Ia and the Rome II Regulations, the harmonization of protection from strategic lawsuits against public participation through common minimum standards is a necessary complement of such reform. The existence of uniform safeguards applicable in all Member States would reduce the attractiveness of libel tourism and thus constitute a necessary complement to the reform of EU private international law rules applicable to defamation cases.[25] At the same time, it would contribute to reinforce mutual trust, preventing situations where courts refuse the enforcement of rulings issued by other Member States' courts based on their own

[24] See Index on Censorship, A gathering storm - The laws being used to silence the media, cited.

[25] Such reform should be aimed at grounding jurisdiction in the courts of the place the defendant's domicile and to introduce predictable choice of law formulae for defamation cases. See Justin Borg-Barthet, The Brussels Ia Regulation as an Instrument for the Undermining of Press Freedoms and the Rule of Law: an Urgent Call for Reform, cited.

national standards on what constitute abusive claims.[26]

## LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY: WHAT CAN, AND SHOULD, THE EU DO

By contributing to the enforcement of Union law, enhancing the legal protection of rights under Union law, safeguarding the effectiveness of Union law, facilitating the enjoyment of internal market freedoms and preserving the effective functioning of national justice systems and of the common space of judicial cooperation, protection from strategic lawsuits against public participation substantively contributes to the proper functioning of the internal market.

Based on the EU's competences as established by the Treaties, the EU legislator can introduce harmonised rules to guarantee a high and uniform standard for the protection of natural and legal persons targeted by SLAPP suits brought on civil and commercial matters across the EU, and thus preserve the internal market from its harmful effects. Such rules would respond to the objective of promoting the proper functioning of the internal market by means of ensuring effective access to justice and promoting the compatibility of the rules on civil procedure applicable in the Member States to eliminate obstacles to the proper functioning of civil proceedings. They could thus be adopted on the basis of Articles 114 and 81(2)(e) and (f) of the Treaty on the Functioning of the European Union (TFEU).

The introduction of such harmonised rules would be in accordance with the principle of subsidiarity, as the objective of ensuring a high and uniform standard for the protection of persons targeted by civil and commercial SLAPP suits across the EU may only be achieved at EU level. Indeed, individual or uncoordinated initiatives at national level would likely perpetuate fragmentation of protection and the related negative impact of such fragmentation on the EU legal order.

The introduction of harmonised rules by means of setting minimum standards of protection, to be implemented in accordance with national judicial systems and leaving to Member States the possibility to introduce or retain provisions more favourable to SLAPP targets, would secure the proportionate nature of the EU legislative intervention. To that effect, a minimum harmonisation Directive appears as the most appropriate instrument to achieve the objectives pursued.

[26] See for example this case reported by the French newspaper Capital.

## THE PROPOSED MODEL DIRECTIVE: A GUIDE TO THE READER

An EU anti-SLAPP Directive should introduce appropriate procedural safeguards against SLAPPs, provide for supportive and protective measures for SLAPP targets and include deterrent and awareness raising measures.

The model Directive proposed in this paper has been drafted taking into account relevant literature, existing and model anti-SLAPP statutes as well as the experience of lawyers litigating SLAPP suits in the EU. As regards procedural safeguards, the solutions proposed have been formulated on the basis of the analysis of legislative solutions in selected jurisdictions[27], taking into account both strengths and shortcomings as reflected in judicial practice.

The proposal put forward in this paper is composed of 28 provisions structured in seven chapters:

- Chapter I on subject matter, scope and definitions;
- Chapter II on procedural safeguards to enable the early dismissal of SLAPP suits;
- Chapter III on safeguards specific to claims arising from the exercise of the right to freedom of expression;
- Chapter IV on assistance, support and protection of SLAPP targets;
- Chapter V on deterrent measures;
- Chapter VI on remedies against SLAPP suits initiated in third countries against a person domiciled in a Member State;
- Chapter VII containing general and final provisions.

The following paragraphs offer a brief explanation of the main components of the proposed model Directive.

### *A minimum harmonization approach*

The legal and non-legal measures put forward in the model Directive are crafted having due regard to the principle of national procedural autonomy and taking into account differences in Member States' legal and judicial traditions. Existing differences between the continental and common law systems have been duly considered when borrowing solutions, based on a comparative law approach. The measures proposed in this model Directive would be meant to be implemented by Member States in

[27] These are Australia, British Columbia, California, Ontario and Quebec, which have been selected taking into account the comprehensive scope of the enacted anti-SLAPP statutes, which include some innovative legislative solutions, as well as the quality of related litigation and judicial practice.

accordance with their national judicial systems (see Article 27 on 'Transposition').

The model legislation would be without prejudice to existing national rules establishing safeguards, remedies or redress mechanisms against abusive claims outside the scope of the proposed provisions (see Article 4(1)). Member States should always remain free to maintain or introduce safeguards, remedies or redress mechanisms providing for a level of protection equal or superior to that envisaged (see Article 26 on 'More favourable treatment').

### *Ensuring a fair balance of rights*

Harmonisation should be directed at ensuring that a fair balance between the rights of the parties can be struck in disputes arising from public participation on matters of public interest, having regard to the circumstances of the case and the public interest at stake.

The model Directive would be without prejudice to EU and national rules regulating matters that relate to the protection of rights of others and/or objectives of general interest, and in particular the protection of personal data, the protection of legal and medical professional privilege, the confidentiality of judicial deliberations. Rules of criminal law and criminal procedure would also remain unaffected (see Article 4(2)).

The procedural safeguards provided for by the model Directive are intended to redress the imbalance between the parties that characterizes SLAPP suits, securing the enjoyment of the right to an effective remedy for both claimants and defendants in such disputes, without prejudice to the right to access to a court. Provisions are equally proposed to prevent and sanction the abuse of such procedural safeguards, including exceptions where the motion for dismissal should not be possible (Article 5(3)), rules on the fair compensation of costs (Article 11), derogations from statutory caps on damages in cases relating to the exercise of freedom of expression (Article 16(3)).

### *Acknowledging SLAPPs' common core elements*

The starting point around which the proposal revolves is that, whatever the legal action through which they are brought, SLAPP suits are generally characterised by two common core elements:

(1) the identification of the behaviour from which the claim arises as a form of public participation on a matter of public interest. This exposes the chilling effect which the claim has or may potentially have on that or on similar forms of public participation;

(2) the abusive nature of the claim that rests in the claim's lack of legal merits, in its manifestly unfounded nature or in the claimant's abuse of rights or of process laws. This exposes the use of the judicial process for purposes other than genuinely asserting, vindicating or exercising a right, but rather of intimidating, depleting or exhausting the resources of the defendant.

The model Directive uses the term 'abusive lawsuits against public participation' to qualify

claims to be qualified as SLAPPs on the basis of the above elements (Article 3(1)).

### *A broad material scope*

The material scope of the proposed rules would extend to any disputes on civil or commercial matters, irrespective of the nature of the judicial claim or action brought (see Article 2). It appears particularly relevant to underline that safeguards should apply also to actions to obtain interim, precautionary or other prior restraint measures, as well as particular types of remedies available under sectorial legislation such as the right to rectify or the right of reply. Actions brought by any natural or legal person should be covered, including actions brought by both private parties and public actors, such as public officials acting in the exercise of their functions, public bodies or other public or state-controlled entities.

### *A comprehensive definition of what constitutes public participation on matters of public interest*

Public participation can express itself in a variety of behaviours and should therefore be defined in a comprehensive manner. The definition proposed (Article 3(2)) encompasses any behaviour of a natural or legal person directed at engaging on a matter of public interest through the disclosure, dissemination or promotion to the public in any form of information, findings, ideas, opinions or testimonies, and any preparatory action thereof. This should include the exercise of freedom of expression and information, assembly, association and of other rights relevant to participation, such as access to justice.

Determining whether a matter is of public interest shall rest on a broad interpretation of what can be related to a shared political, social, economic, environmental or other concern, also having regard to the potential or actual impact on the welfare of society or part of it. This may include matters affecting particular communities or minorities. The definition proposed (Article 3(3)) allows for the concept to be equally related to a particular subject matter regarded as connected to a public interest or to a behaviour capable of affecting or endangering a public interest. The assessment whether a certain matter is of public interest shall be made in accordance with fundamental rights and principles, as enshrined in the EU Charter of Fundamental Rights and the European Convention on Human Rights, having regard to relevant jurisprudence of the Court of Justice of the EU and of the European Court of Human Rights.

### *Early dismissal of SLAPP claims as a key procedural safeguard*

The possibility to obtain the early dismissal of the claim is a key procedural safeguard to counter the harmful effects of SLAPP suits and redress the imbalance between parties in such cases.

The proposed model Directive provides that, where there are reasons to believe that the claim is an abusive lawsuit against public participation, the defendant shall have the possibility to file a motion to dismiss as from the

moment proceedings have commenced (see Article 5 on the 'Motion for dismissal').

The model Directive would ensure that the right to file a motion for dismissal is not frustrated by rules on concurrent proceedings, which provide for civil proceedings to be stayed until a decision is taken in related criminal proceedings (Article 3(2)). This bearing in mind that in many cases, since SLAPPs are often grounded in claims of defamation, libel or slander, which still constitute criminal offences in most Member States, SLAPP targets find themselves to face criminal charges while being sued at the same time for civil liability purportedly arising from the same conducts.

The proposed rules would also foresee certain exceptions to preserve overriding public interests that may be inherent to certain actions (Article 5(3)). The cases foreseen concern namely claims based on a decision of a court or tribunal upholding an enforcement action brought by an executive body or entity pursuant to Union or national law, and public interest claims pursuant to Union law (such as, for example, representative actions for the protection of the collective interests of consumers[28]). Such exceptions should be interpreted strictly not to frustrate the objectives of the proposed rules.

While the filing of the motion for dismissal may be subject to rules and conditions, the exercise of this right shall not be rendered impossible or excessively difficult. This includes establishing time limits in a way that gives due account to the fact that the abusive nature of the claim may not be apparent as from the moment the action is filed (Article 5(5)).

Considering the general interest in safeguarding public participation and the legal obligation to safeguard the exercise of fundamental rights and freedoms from undue interferences, courts before which an abusive lawsuit against public participation is filed should be able to dismiss the case ex officio (Article 5(6)).

The model Directive proposes rules to harmonise the conditions under which claims should be dismissed based on the identified SLAPPs' common core elements, and to provide guidance for the courts' assessment (Article 6). Provided that the court is satisfied that the claim arises from the defendant's public participation on a matter of public interest, the court shall make an assessment as to whether the claim, or part of it, is without legal merits, is manifestly unfounded or features elements indicative of an abuse of rights or of process laws, and shall therefore be fully or partly dismissed as an abusive lawsuit against public participation.

A reverse burden of proof should be applied to put it on the claimant to demonstrate the

[28] Agreed text of the Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC (2020).

elements supporting a decision not to dismiss (Article 7).

Pending a final decision on dismissal, the proposal envisages that the main proceedings – as well as other related actions – be stayed, with all discovery being halted and time limits suspended (Article 8).

At the same time, measures are proposed to ensure procedural expediency (Article 9). To that effect, the proposal provides for time limits to be set for the holding of hearings and for the court to take a decision on the motion. In establishing and applying time limits, due consideration should be given to the particular urgency deriving from the circumstances of the case. Particular attention should be paid to the nature of the action, with specific reference to actions, such as injunctions, whose objective is prior restraint.

The proposal foresees that if granted, dismissal should terminate proceedings without the need of further action by the defendant (Article 10(1)). The court should nonetheless remain free to order proceedings to continue in relation to part of the claim at its discretion. When a case is dismissed pursuant to the proposed rules, the claimant in the main proceedings should as a rule not be permitted to amend the pleadings to continue proceedings (Article 10(2)).

Having regard to the right to an effective remedy, the proposal provides that the decision on dismissal should always be amenable to judicial review before a higher court or tribunal, while underlining the importance of procedural expediency also for the appeal stage (Article 13).

In order to ensure settlement schemes are not used as a secondary abusive tool against defendants filing substantiated motions to dismiss, the model Directive suggests that settlements of a motion for dismissal are made subject to judicial authorisation, providing guidance as to the elements that should be taken into account for that purpose (Article 14).

#### *Effects of a dismissal decision on other disputes*

The model Directive suggests that, when dismissal is granted, it shall serve as a presumption of the abusive nature of the claim for the purpose of other actions against the same defendant for the same public participation conduct brought before national courts or the courts of any other Member State (Article 10(3)). The proposed rules further suggest that a final decision granting dismissal taken by a court of any Member State should be deemed as a rebuttable presumption of the inadmissibility of claims concerning the same public participation conduct (Article 10(5)).

#### *A fair award of costs and relief*

The proposed rules (Article 11) envisage that SLAPP litigants who see their claim dismissed are ordered to pay costs to the defendant on a full indemnity basis. The payment of advance costs in favour of the defendant may be ordered as a rule when there is a prima facie case of abusive lawsuit against public participation. The defendant should also have the possibility

to file a security of costs application. Where the motion is granted, the defendant should be automatically awarded compensation of costs. Conversely, when the motion is denied, the claimant may be awarded costs on the motion unless the court does not consider it appropriate.

The model Directive foresees that when filing a motion to dismiss, the defendant should also be entitled to file an incidental claim for damages (Article 12). In the event of dismissal, compensatory and non-compensatory damages shall be awarded to the defendant as the courts consider appropriate. Non-compensatory damages may consist in exemplary or punitive damages where the possibility to award such damages is provided for by national law.

#### *Strengthened safeguards for claims affecting the exercise of freedom of expression*

The model Directive proposes specific safeguards for SLAPP claims brought in relation to the exercise of freedom of expression, such as defamation, libel or slander claims, as in the light of available research these constitute the majority of SLAPP suits brought across the Union. The proposed measures consist in strengthened procedural safeguards on dismissal (enhanced expediency, exclusion of jury trials, higher burden of proof threshold for the claimant in the main proceedings) (Article 15); as well as the provision of a statutory cap on damages (Article 16). The latter provision clarifies that courts should retain discretion to derogate from the statutory cap having regard to the circumstances of the case, including whether the defamatory statements were not made in good faith.

#### *Assistance, support and protection for SLAPP targets*

The proposed rules include measures to ensure that SLAPP targets can be provided with assistance, support and protection both within and outside the judicial process. These consist, in particular, of financial assistance to enable effective exercise of the right of defence, also considering the financial imbalance between parties which often characterizes SLAPP suits (Article 17); the possibility for third parties, in particular non-governmental actors, to intervene in court proceedings (Article 18); the possibility for the defendant to be substituted in proceedings by a third party bearing responsibility for the behaviour at the origin of the claim (such as it would be, for example, the editor or publisher for a journalist) (Article 19); as well as the access to support services, including against the risk of emotional or psychological harm, and protection from further intimidation and retaliation (Article 20).

#### *Deterrent measures*

The model Directive suggests that the provision of procedural safeguards and of measures of assistance, support and protection for SLAPP targets be accompanied by deterrent measures.

Penalties can have a strong deterrent effect on abusive lawsuits against public participation and should apply in the event of a decision granting dismissal. The proposed rules envis-

age the imposition of penalties by the court in the event of a decision granting dismissal (Article 21). The provision also foresees that, when the claimant is a legal person, penalties be imposed to natural persons who, considering their leading position, are deemed to have taken part in the decision of initiating the claim. Member States should be encouraged to extend penalties to SLAPP suits beyond the scope of minimum harmonization, to claims other than lawsuits on civil and commercial matters. This is of particular relevance to criminal complaints, also having regard to the fact that many SLAPP suits in the EU are grounded in claims for criminal defamation.

In order to prevent claimants from initiating multiple SLAPP claims, the model Directive suggests that Member States should be required to enable court taking a dismissal decision to prevent the claimant from instituting other proceedings on the same matter or closely linked to it, notwithstanding the right to access to a court (Article 22).

To raise awareness on and ensure publicity of SLAPP cases, in accordance with the open justice principle, proposed rules also suggest that Member States should be required to establish a register of court decisions relevant to the matter which shall be made publicly accessible (Article 23). This is intended as being without prejudice to applicable EU and national rules on data protection. The provision also suggests a special notification regime for dismissal decisions when the claimant is a natural or legal person contracted or awarded procurement by a public body or entity.

### *Providing remedies against SLAPP suits brought in third countries*

Abusive lawsuits against public participation are routinely brought before courts of third countries against defendants domiciled in Member States. It is therefore necessary to ensure that such defendants have access to appropriate remedies before the courts of the Member State where they are domiciled, such as the possibility to file claims for damages. With a view to that, the model Directive suggests that Member States should introduce remedies as are necessary to dissuade the pursuance of such claims, including the summary award of damages and the imposition of penalties (Article 24).

### *Awareness raising*

Raising awareness on strategic lawsuits against public participation is key to sensitise both the public and legal professionals, in particular judges and lawyers, to the issue.

The model Directive proposes that Member States be required to facilitate the provision of both general and specialist training to judges and lawyers to increase their awareness of SLAPP suits (Article 25). Integrating ethics rules and standards, including by providing for disciplinary measures, may be envisaged to deter lawyers from engaging in such litigation. At the same time, training can substantively contribute to build knowledge and capacity in how to deal with such lawsuits, and the threat thereof. SLAPP targets and potential targets, such as journalists and civil society actors, should also benefit from training on

their rights and obligations. The provision would also require Member States to support independent bodies capable of hearing complaints from and providing assistance to persons threatened or faced with SLAPP suits, such as ombudspersons (Article 25(4)).

### *Encouraging data collection*

With a view to encouraging the compilation of comprehensive statistics on SLAPP suits in the EU, the model Directive suggests that Member States, in providing information regarding the implementation of the new rules, should also transmit on an annual basis relevant statistics of a qualitative and quantitative nature on disputes, court decisions and the implementation of preventive, supportive and deterrent measures (Article 28).

# A MODEL EU DIRECTIVE ON PROVIDING PROTECTION FROM ABUSIVE LAWSUITS AGAINST PUBLIC PARTICIPATION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2)(e) and (f) and Article 114 thereof,

Whereas:

(1) Persons who engage in public participation on matters of public interest play a key role in raising public awareness and in exposing and preventing threats or harm to the welfare of society. Such persons, including journalists, rights defenders, activists, civil society organisations and academics, are however often the target of abusive judicial claims initiated or maintained with the main purpose of hindering public participation, also known as SLAPPs (strategic lawsuits against public participation).

(2) Abusive lawsuits against public participation can materialize in a variety of legal actions. Irrespective of the object and the type of action, these lawsuits are characterised by two common core elements. First, the behaviour from which the claim arises, which expresses a form of public participation by the defendant on a matter of public interest. This exposes the chilling effect which the claim has or may potentially have on that or on similar forms of public participation. Secondly, the abusive nature of the claim that rests in the claim's lack of legal merits, in its manifestly unfounded nature or in the claimant's abuse of rights or of process laws. This exposes the use of the judicial process for purposes other than genuinely asserting, vindicating or exercising a right, but rather of intimidating, depleting or exhausting the resources of the defendant.

(3) The need to provide balanced and effective protection from abusive lawsuits against public participation is increasingly acknowledged at both Union and international level.

(4) At Union level, these lawsuits are at odds with the values of democracy, the rule of law and respect for human rights which lie at the foundation of the Union in accordance with Article 2 of the Treaty on European Union (TEU). They are a direct attack on the exercise of fundamental rights and freedoms which enable public participation, such as the right to freedom of expression and of information, the right to freedom of association and peaceful assembly, the right to good

administration or the right to an effective remedy. As such, they have a severe chilling effect on democratic debate and undermine efforts to ensure that all persons, institutions, and entities are equally accountable to the law.

(5) Insofar as they hinder public participation, these lawsuits threaten the effective enforcement of Union laws and policies and hamper the legal protection of individual rights under Union law. The disclosure, dissemination and promotion of information, findings and testimonies inform national and Union enforcement systems concerning potential breaches of Union law, leading to effective detection, investigation and prosecution of breaches of Union law, thus enhancing transparency and accountability. It also enables the vigilance of individuals concerned to protect their rights under Union law, which amounts to an effective supervision of the respect of obligations deriving from Union law by national authorities and persons amenable to the jurisdiction of the Member States. Such supervision is a necessary complement to the supervision entrusted by the Treaty on the Functioning of the European Union (TFEU) to the diligence of the European Commission and of the Member States. Better enabling public participation on matters of public interest by strengthening protection from abusive lawsuits against public participation is therefore crucial with a view to rendering more effective the enforcement of Union law and policies and to enhancing the legal protection of rights under Union law in accordance with Article 19 TEU.

(6) Rights conferred upon individuals and entities, including rights to data protection and intellectual property, are routinely cited in abusive lawsuits against public participation. While legitimate rights arising from European Union law must be upheld by the courts of the Member States, it is necessary to prevent an abuse of those rights in a manner which is contrary to the intention of the Union's legislators in conferring the said rights, with a view to securing the correct and uniform application of Union law and thus safeguarding its effectiveness.

(7) A uniform protection from abusive lawsuits against public participation also has a direct beneficial impact on the enjoyment of internal market freedoms by individuals and organisations most vulnerable to such claims, such as journalists, media outlets and civil society organisations. In addition, it can contribute to a more effective functioning of national justice systems, which are negatively affected by such improper use of the judicial process.

(8) While statutes on such abusive litigation against public participation exist in many countries outside the Union, no Member State currently provides an adequate and comprehensive regulatory framework against such lawsuits. National general or sectorial rules, including rules of procedure, offer certain safeguards against claims which can variably be qualified as meritless or abusive. However, the level of protection suffers from the lack of a consistent and comprehensive legal and judicial approach that would allow to promptly detect and effectively address this particular type of abusive lawsuits, which clearly warrant strengthened safeguards in view of their impact on the

exercise of fundamental rights and freedoms and on public participation. At the same time, the fragmentation of protection which derives from the multitude of procedural rules that may be applicable to different types of actions and in different policy areas also frustrates legal certainty and the defendants' right to an effective remedy.

(9) In addition, the current unevenness of protection which derives from the different rules applicable in the various national jurisdictions render the Union judicial space particularly vulnerable to abusive lawsuits against public participation. On the one hand, the cross-border elements are taken advantage of for forum shopping, as claimants make use of rules of private international law to select the jurisdiction where the likelihood of achieving the desired result is the greatest instead of the one that has the closest connection to the dispute. While reflections are ongoing on the reform of relevant private international law instruments, and in particular the Brussels Ia and the Rome II Regulations, the harmonization of protection from abusive lawsuits against public participation through common minimum standards is a necessary complement of such reform. On the other hand, the absence of harmonized protection affects mutual trust and impacts on the recognition and enforcement of judgments. This has detrimental consequences for the proper functioning of the common space of judicial cooperation established by Union law.

(10) By contributing to the enforcement of Union law, enhancing the legal protection of rights under Union law, safeguarding the effectiveness of Union law, facilitating the enjoyment of internal market freedoms and preserving the effective functioning of national justice systems and of the common space of judicial cooperation, protection from abusive lawsuits against public participation substantively contributes to the proper functioning of the internal market.

(11) Pursuant to Article 114 TFEU, the Union is to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. Pursuant to Article 81(2) (e) and (f) TFEU, the Union is to adopt, among others, measures relating to judicial cooperation in civil matters relating to the approximation of the laws and regulations of the Member States, that are necessary for the proper functioning of the internal market. These measures are to include measures aimed at ensuring effective access to justice and measures eliminating obstacles to the proper functioning of civil proceedings, if necessary, by promoting the compatibility of the rules on civil procedure applicable in the Member States. On these bases, the Union has the power to adopt procedural safeguards and other preventive, supportive and deterrent measures to provide protection from abusive lawsuits against public participation on civil and commercial matters and thus preserve the internal market from its harmful effects with a view to contributing to its proper functioning.

(12) The measures provided for by this Directive are aimed at ensuring that a fair balance between the rights of the parties can be struck in disputes arising from public participation on matters of public interest, having regard to the circumstances of the case and the public interest at stake. The procedural safeguards provided for by this Directive are intended to redress the imbalance between the parties that characterizes abusive lawsuits against public participation, securing the enjoyment of the right to an effective remedy for both claimants and defendants in such disputes, without prejudice to the right to access to a court. Provisions are equally included to prevent and sanction the abuse of such procedural safeguards.

(13) The material scope of this Directive extends to any disputes on civil or commercial matters, irrespective of the nature of the judicial claim or action brought. This shall notably include actions to obtain interim, precautionary or other prior restraint measures, as well as particular types of remedies available under sectorial legislation such as the right to rectify or the right of reply. The scope covers actions brought by any natural or legal person, to be intended as equally referring to private parties and public actors, including public officials acting in the exercise of their functions, public bodies or other public entities.

(14) Public participation can express itself in a variety of behaviours. The assessment whether a certain behaviour constitutes public participation should have due regard to the circumstances of the case. For the purposes of this Directive, the notion of public participation shall be intended broadly to include any behaviour of a natural or legal person directed at engaging on a matter of public interest through the disclosure, dissemination or promotion to the public in any form of information, findings, ideas, opinions or testimonies, and any preparatory action thereof.

(15) The assessment whether a certain matter is of public interest shall rest on a broad interpretation of what can be related to a shared political, social, economic, environmental or other concern, also having regard to the potential or actual impact on the welfare of society or part of it. This may include matters affecting particular communities or minorities. The concept may equally relate to a particular subject matter regarded as connected to a public interest or to a behaviour capable of affecting or endangering a public interest. In their assessment, courts shall have due regard of the fundamental rights and principles enshrined in the EU Charter of Fundamental Rights, to be interpreted, in accordance with Articles 52 and 53 thereof, in light of the corresponding rights guaranteed by the European Convention on Human Rights, having regard to the jurisprudence of the European Court of Human Rights.

(16) The possibility to obtain the early dismissal of the claim is a key procedural safeguard to counter the harmful effects of abusive lawsuits against public participation. Where there are reasons to believe that the claim is an abusive lawsuit against public participation, the defendant shall have the possibility to file a motion to dismiss as from the moment proceedings have commenced.

(17) Many abusive lawsuits against public participation are grounded in claims of defamation, libel or slander, which still constitute criminal offences in most Member States despite repeated calls for decriminalization by international and regional bodies including the Council of Europe. As a result, defendants often face criminal charges while being sued at the same time for civil liability purportedly arising from the same conducts. In some cases, national rules provide for civil proceedings to be stayed pending the outcome of criminal proceedings. It is therefore important to ensure that the defendant's right to request that the case be dismissed pursuant to this Directive is not frustrated by rules providing for proceedings to be stayed until a decision is taken in the related criminal proceedings.

(18) The possibility to file a motion to dismiss may be excluded in well-defined cases where this appears necessary in order to achieve a fair balance between the rights of the parties and the public interests at stake. This is the case, in particular, where the claim is based on a decision of a court or tribunal upholding an enforcement action brought by an executive body or entity pursuant to Union or national law, or where the claim is a public interest claim pursuant to Union law. Nonetheless, such exceptions should be interpreted strictly not to frustrate the objectives of this Directive. In particular, the possibility to file a motion to dismiss shall always be available to defendants against whom a claim is asserted that relates to the exercise of public scrutiny and public information, such as journalistic communications, publications or works, including editorial content, communications, publications or works of a political, scientific, academic, artistic, commentary or satirical nature, or communications, publications, works or actions of organizations or groups with a not-for-profit purpose lawfully operating in a Member State.

(19) Provided that the court is satisfied that the claim arises from the defendant's public participation on a matter of public interest, the court shall stay proceedings, halting all discovery, and make an assessment as to whether the claim, or part of it, is without legal merits, is manifestly unfounded or features elements indicative of an abuse of rights or of process laws, and shall therefore be fully or partly dismissed as an abusive lawsuit against public participation.

(20) In its assessment, the court shall consider both elements related to the claim itself (such as whether the claim appears disproportionate, excessive or unreasonable having regard to its object) and elements related to the litigation tactics deployed (including as regards the choice of jurisdiction, the use of dilatory strategies and the filing of multiple claims). Other relevant circumstances should be taken into account, such as the imbalance of power between the parties or the financing of litigation by a third party. Claims that would qualify as frivolous or vexatious the applicable law or practice of the forum, including based on rules on the threshold of harm, shall always be regarded as indicative of an abuse of rights or of process laws for the purpose of this Directive.

(21) While the filing of the motion for dismissal may be subject to rules and conditions, the exercise of this right shall not be rendered impossible or excessively difficult. This includes establishing time limits in a way that gives due account to the fact that the abusive nature of the claim may not be apparent as from the moment the action is filed.

(22) Considering the general interest in safeguarding public participation and the legal obligation to safeguard the exercise of fundamental rights and freedoms from undue interferences, courts before which an abusive lawsuit against public participation is filed should be able to dismiss the case ex officio.

(23) The rules on the burden of proof must be adapted when there is a prima facie case of abusive lawsuit against public participation. In order to redress the imbalance between the parties, when the defendant in the main proceedings files a motion for dismissal bringing evidence that the claim arises from public participation on a matter of public interest, the burden of proof must shift to the claimant in the main proceedings to provide evidence against dismissal.

(24) The examination of the motion for dismissal shall be expedited. To that effect, time limits should be set for the holding of hearings and for the court to take a decision on the motion. In establishing and applying time limits, due consideration should be given to the particular urgency deriving from the circumstances of the case. These shall be intended as including the nature of the action, with specific reference to actions such as injunctions whose objective is prior restraint.

(25) When a motion for dismissal is filed, the main proceedings shall be stayed until a final decision on the motion is taken. When dismissal is granted, it shall serve as a presumption of the abusive nature of the claim for the purpose of other actions against the same defendant and/or for the same public participation conduct.

(26) Rules on the award of costs in the event of a decision granting or denying dismissal must serve as compensation for the parties. The payment of advance costs in favour of the defendant may be ordered as a rule when there is a prima facie case of abusive lawsuit against public participation. The defendant should also have the possibility to file a security of costs application. Where the motion is granted, the defendant should be automatically awarded compensation of costs.

(27) In the event of dismissal, compensatory and non-compensatory damages shall be awarded to the defendant as the courts consider appropriate. Non-compensatory damages may consist in exemplary or punitive damages where the possibility to award such damages is provided for by national law.

(28) Specific safeguards must be provided for as regards public participation amounting to the exercise of the right to freedom of expression, which is the object of the majority of abusive lawsuits against public participation brought across the Union. This can be referred to a variety of claims such as defamation, libel, slander, but also insult or injury.

(29) Natural and legal persons targeted by abusive lawsuits against public participation shall benefit from measures of assistance, support and protection both within and outside the judicial process.

(30) Penalties can have a strong deterrent effect on abusive lawsuits against public participation and should apply in the event of a decision granting dismissal. Member States are encouraged to extend the scope of application of penalties established pursuant to this Directive to abusive lawsuits against public participation which are outside its scope. This is of particular relevance to criminal complaints brought in relation to the exercise of freedom of expression, such as criminal defamation.

(31) Abusive lawsuits against public participation are routinely brought before courts of third countries against defendants domiciled in Member States. It is therefore necessary to ensure that such defendants have access to appropriate remedies before the courts of the Member State where they are domiciled, such as the possibility to file claims for damages.

(32) Raising awareness on abusive lawsuits against public participation is key to sensitise both the public and legal professionals, in particular judges and lawyers, to the issue. Integrating ethics rules and standards, including by providing for disciplinary measures, may be envisaged to deter lawyers from engaging in such litigation. At the same time, training can substantively contribute to build knowledge and capacity in how to deal with such lawsuits, and the threat thereof. Targets and potential targets should also benefit from training on their rights and obligations.

(33) Since the objectives of this Directive cannot be sufficiently achieved by the Member States acting alone and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5(3) of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(34) The main purpose of this Directive is to guarantee an adequate and uniform level of protection from abusive lawsuits against public participation on civil and commercial matters by laying down certain minimum common standards relating to procedural safeguards and other preventive, supportive and deterrent measures. A Directive is the most suitable legislative instrument for this purpose. Member States shall take such measures as are necessary to transpose the provisions of this Directive, in accordance with their national judicial systems.

(35) This Directive respects fundamental rights and the principles recognised in particular by the EU Charter of Fundamental Rights. Accordingly, it is essential that this Directive be implemented in accordance with those rights and principles by ensuring full respect for, inter alia, freedom of expression and information, the freedom to conduct a business and the right to an effective remedy, including the equality of both parties in a dispute. Pursuant to Articles 52 and 53 of the Charter, these rights and principles shall be interpreted in light of the corresponding rights guaranteed by the European Convention on Human Rights, having regard to the jurisprudence of the European Court of Human Rights.

The European Parliament and the Council, upon a proposal by the European Commission, should adopt this Directive:

# CHAPTER I

## SUBJECT MATTER, SCOPE AND DEFINITIONS

### Article 1

*Subject matter*

This Directive lays down common minimum standards on procedural safeguards and other preventive, supporting and deterrent measures providing protection from abusive lawsuits against public participation.

### Article 2

*Material scope*

1. This Directive applies to any dispute on a civil or commercial matter, irrespective of the nature of the judicial claim or the action brought.

2. This is without prejudice to the power of Member States to extend protection under national law beyond the scope of this Directive as determined by the preceding paragraph.

3. The safeguards contained in Chapters II, III, IV and V of this Directive apply to disputes initiated in the courts of the Member States in respect of proceedings commenced on or after the date set as the deadline for the transposition of this Directive.

### *Article 3*

*Definitions*

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

(1) 'abusive lawsuit against public participation' refers to a claim that arises from a defendant's public participation on matters of public interest and which lacks legal merits, is manifestly unfounded, or is characterised by elements indicative of abuse of rights or of process laws, and therefore uses the judicial process for purposes other than genuinely asserting, vindicating or exercising a right;

(2) 'public participation' refers to any behaviour of a natural or legal person directed at engaging on a matter of public interest through the disclosure, dissemination or promotion to the public in any form of information, findings, ideas, opinions or testimonies. This shall include, but not be limited to:

- actions and activities resulting from the exercise of the right to freedom of expression and of information, 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 thereof;

- actions and activities resulting from 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, and any preparatory activities thereof;

- actions and 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 or administrative and judicial claims, and any preparatory activities thereof;

- any other conduct meant to inform or influence public opinion or to further action by the public, a private or public entity in relation to an issue of public interest, such as the organisation of or participation to research, surveys, boycotts, campaigns or any other collective actions, and any preparatory activities thereof.

(3) 'matter of public interest' refers to any issue which can be related to a shared political, social, economic, environmental or other concern, also having regard to its potential or actual impact on the welfare of society or part of it. This shall include, but not be limited to:

- issues related to health, safety or social, environmental, economic or community well-being;

- issues related to a good, product or service on the market;

- issues concerning a person or entity in the public eye;

- issues relating to a topic of widespread interest;

- issues under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;

- any conduct or behaviour capable of affecting or endangering a public interest, such as hypocrisy, misleading the public, serious wrongdoing, corruption or criminality.

(4) 'claim' refers to any action asserted before a national court or tribunal, including actions to obtain interim, precautionary or other prior restraint measures, particular types of remedies available under sectorial legislation, incidental actions, counteractions and claims brought in connection with administrative or criminal proceedings;

(5) 'claimant' refers to a natural or legal person, irrespective of whether privately or publicly controlled, who is asserting a claim before a national court or tribunal, including through any other person acting in their name or on their behalf;

(6) 'defendant' refers to a natural or legal person against whom a claim is asserted before a national court or tribunal;

(7) 'dismissal' means a decision by a competent court or tribunal which has the effect of terminating a claim without further examination on the merits or before a final determination. This may include, but not be limited to, a decision of non-admissibility;

(8) 'final decision' means a decision by a Member State's court or tribunal that cannot or can no longer be appealed.

### *Article 4*

*Relationship with other Union acts and national provisions*

1. This Directive is without prejudice to national rules providing for safeguards, remedies and redress mechanisms against abusive claims outside the scope of this Directive.

2. This Directive shall not affect the application of Union or national law relating to any of the following:

(a) the protection of personal data;

(b) the protection of legal and medical professional privilege;

(c) the confidentiality of judicial deliberations;

(d) rules of criminal law and criminal procedure.

# CHAPTER II

## EARLY DISMISSAL OF ABUSIVE LAWSUITS AGAINST PUBLIC PARTICIPATION

### Article 5

*Motion for dismissal*

1. Member States shall take the measures necessary to entitle a defendant against whom a claim is asserted to file a motion for dismissal before the competent court or tribunal if the defendant believes that the claim is an abusive lawsuit against public participation.

2. Member States shall take the measures necessary to ensure that the possibility to file a motion for dismissal as provided for in paragraph 1 is available to defendants in claims brought in connection to concurrent administrative or criminal proceedings and that the opportunity to dismiss the claim be considered and decided upon pursuant to this Directive notwithstanding national rules on concurrent proceedings.

3. Member States may provide that the motion for dismissal shall not be possible if:

   (a) the claim is based on a decision of a court or tribunal upholding an enforcement action brought by an executive body or entity pursuant to Union or national law, or

   (b) the claim is a public interest claim pursuant to Union law.

4. Member States shall ensure that the motion referred to in paragraph 1 may be filed as from the moment the proceedings have commenced in accordance with the procedural rules applicable to the court or tribunal seized of the matter.

5. Member States may establish time limits for the defendant to exercise the right to file a motion for dismissal pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult. When establishing time limits pursuant to this paragraph, Member States shall allow the court or tribunal to extend such time limits to allow the defendant to exercise the right to file a motion for dismissal where this is warranted by new evidence or circumstances, or

in any other case where this is necessary to enable the defendant to effectively exercise the said right.

6. Member States shall empower the courts to consider at their own motion at any stage of the proceedings the opportunity to dismiss a claim pursuant to this Directive.

### *Article 6*

*Conditions for dismissal*

1. Member States shall take the measures necessary to ensure that the court or tribunal competent to hear the motion as referred to in Article 5, where it is satisfied with the evidence provided by the defendant that the claim arises from public participation on matters of public interest, shall adopt a decision to dismiss, in full or in part, the claim in the main proceedings if any of the following grounds is established:

   (i) the claim does not have, in full or in part, legal merits;

   (ii) the claim, or part of it, is manifestly unfounded;

   (iii) there are elements indicative of an abuse of rights or of process laws.

2. Without prejudice to the discretion afforded to courts by the procedural rules of the Member States, Member States shall ensure that the following elements are taken into account in the court's assessment pursuant to paragraph 1:

   (i) the reasonable prospects of success of the claim, also having regard to the compliance with applicable ethics rules and standards of the conduct constituting the object of the claim in the main proceedings;

   (ii) the disproportionate, excessive or unreasonable nature of the claim, or part of it, including but not limited to the quantum of damages claimed by the claimant;

   (iii) the scope of the claim, including whether the objective of the claim is a measure of prior restraint;

   (iv) the nature and seriousness of the harm likely to be or have been suffered by the claimant;

(v) the litigation tactics deployed by the claimant, including but not limited to the choice of jurisdiction and the use of dilatory strategies;

(vi) the envisageable costs of proceedings;

(vii) the existence of multiple claims asserted by the claimant against the same defendant in relation to similar matters;

(viii) the imbalance of power between the claimant and the defendant;

(ix) the financing of litigation by third parties;

(x) whether the defendant suffered from any forms of intimidation, harassment or threats on the part of the claimant before or during proceedings;

(xi) the actual or potential chilling effect on public participation on the concerned matter of public interest.

3. Claims qualifying as frivolous or vexatious under national law or practice, including claims based on rules on the threshold of harm, shall always be regarded as indicative of an abuse of rights or of process laws for the purpose of the court's assessment pursuant to paragraph 1.

### *Article 7*

*Burden of proof*

1. Member States shall take the measures necessary to ensure that it is incumbent on the claimant in the main proceedings to prove that none of the grounds as referred to in Article 6(1) may be established, in that the claim has legal merits, that it is not manifestly unfounded, and that there are no elements indicative of an abuse of rights or of process laws.

2. This article shall not prevent Member States from introducing rules of evidence which are more favourable to the defendant.

### *Article 8*

*Stay of proceedings and suspension of limitation periods*

1. Member States shall ensure that the main proceedings that are the object of a motion for dismissal as referred to in Article 5 shall be stayed and all discovery halted upon the filing of the motion and until a final decision on the motion is taken by the competent court or tribunal, unless otherwise provided by the competent court or tribunal having regard to the circumstances.

2. Member States shall take the measures necessary to prevent the claimant from amending the pleadings once a motion for dismissal as referred to in Article 5 is filed, when, prima facie, it appears to the court that this is done with the aim of avoiding a dismissal order or of continuing the proceedings after a dismissal decision is taken.

3. Member States shall take the measures necessary to empower the court or tribunal before which a motion for dismissal as referred to in Article 5 is filed to suspend other proceedings on the same matter or closely linked to it, for a period of time that the court or tribunal determines to be appropriate, with due regard to the right to access to a court.

4. Member States shall ensure that the filing of a motion for dismissal as referred to in Article 5 shall have the effect of suspending or interrupting limitation periods applicable to any redress actions for the parties, if the relevant rights are subject to a limitation period under Union or national law.

### *Article 9*

*Procedural expediency*

1. Member States shall take the necessary measures to ensure that a motion for dismissal as referred to in Article 5 is treated with due expediency, with due regard to the circumstances of the case and to the right to an effective remedy.

2. Member States shall ensure that, if a hearing is to occur in accordance with national rules of procedure, such hearing shall be held at the latest within 3 months from the filing of the motion. Member States shall allow the court or tribunal to extend such time limit by an additional period of 30 days in duly motivated cases where this is necessary to enable the parties to effectively exercise their rights of defence.

3. Where a hearing is to occur pursuant to national rules of procedure, Member States may provide for the possibility for the claimant to waive the right to a hearing and dismiss the claim.

4. Member States shall establish a time limit of maximum 6 months from the filing of the motion for the competent court or tribunal to take a decision on the motion. Member States shall allow the court or tribunal to extend such time limit by an additional period of 3 months in duly motivated cases where the examination of the motion involves complex issues of fact or law, with due regard to the right to an effective remedy and to the interests of justice.

### *Article 10*

*Effects of a dismissal decision*

1. Member States shall ensure that a final decision taken by the competent court or tribunal granting dismissal shall have the effect of terminating the main proceedings without the need of further action by the defendant. This is without prejudice to the possibility for the court or tribunal to continue proceedings in relation to part of the claim.

2. Member States shall ensure that once a decision is taken by the competent court or tribunal granting dismissal, the claimant may not be permitted to amend the pleadings to continue the proceedings, unless otherwise decided by the court or tribunal.

3. Member States shall ensure that a final decision granting dismissal taken by the competent court or tribunal of any Member State is deemed as irrefutably establishing the inadmissibility of the claim for the purpose of any other action before their national courts or tribunals against the same defendant for the same public participation conduct.

4. The preceding paragraph shall be interpreted as also referring to concurrent actions of an administrative or criminal nature.

5. Member States shall ensure that a final decision granting dismissal taken by the competent court or tribunal of any Member State is considered as a rebuttable presumption of the inadmissibility of the claim for the purpose of any action before their national courts or tribunals for the same public participation conduct.

### *Article 11*

*Award of costs*

1. Member States shall take the measures necessary to ensure that courts or tribunals granting dismissal pursuant to Article 6 award the defendant costs on the motion and costs in the proceeding on a full indemnity basis.

2. Member States shall take the measures necessary to empower courts or tribunals to award interim costs to the defendant filing a motion for dismissal. The award of interim costs shall be mandatory upon determination that without such assistance the defendant's financial situation would prevent it from effectively exercising the right of defence.

3. Member States shall take the measures necessary to entitle the defendant filing a motion for dismissal to request the court or tribunal to obtain from the claimant a security for costs.

4. Member States shall take the measures necessary to empower courts or tribunals denying dismissal pursuant to Article 6 to award the claimant costs on the motion, unless it determines that such an award is not appropriate in the circumstances.

5. For the purpose of the preceding paragraphs, costs shall include any attorney, expert and court fees and all other reasonable costs and expenses incurred by the parties in relation to the proceedings.

### *Article 12*

*Relief and damages*

1. Where a motion for dismissal as referred to in Article 5 is filed by the defendant in the main proceedings, Member States shall take the measures necessary to entitle the defendant to also file an incidental claim for damages.

2. Member States shall take the measures necessary to ensure that when granting dismissal pursuant to Article 6 the court or tribunal simultaneously decides on the award of pecuniary and non-pecuniary damages to the defendant.

3. Member States shall take the measures necessary to empower the court or tribunal granting dismissal pursuant to Article 6 to impose on the claimant non-compensatory damages as it considers appropriate.

### *Article 13*

*Appeals*

1. Member States shall ensure that a court or tribunal decision granting or denying dismissal pursuant to Article 6 shall be appealable before a higher court or tribunal.

2. Member States shall take the necessary measures to ensure that the time limits provided for in Article 9 equally apply to appeal proceedings as referred to in paragraph 1.

### *Article 14*

*Settlements*

1. Member States shall take the measures necessary to ensure that any settlement between the parties of a motion for dismissal as referred to in Article 5 is be the object of an authorisation decision by the court or tribunal competent to examine the motion.

2. Without prejudice to judicial discretion, Member States shall ensure that the following elements are taken into account by the court or tribunal when deciding on the authorisation pursuant to paragraph 1:

   (i) whether, having regard to the circumstances, the settlement resolves the dispute in appropriate terms with due regard to the interests of justice and the public interest concerned;

   (ii) whether the public interest in a judicial decision on the motion for dismissal outweighs the parties' freedom of contract.

# CHAPTER III

## SAFEGUARDS SPECIFIC TO ABUSIVE LAWSUITS AGAINST THE EXERCISE OF THE RIGHT TO FREEDOM OF EXPRESSION

### Article 15

*Special rules on dismissal*

1. Member States shall take the measures necessary to ensure that the time limits provided for in Article 9 of this Directive are halved where a motion for dismissal as referred to in Article 5 is filed in relation to a claim that arises from the exercise of the right to freedom of expression.

2. Member States shall take the measures necessary to ensure that the court or tribunal competent to hear and decide on a motion for dismissal as referred to in Article 5 filed in relation to a claim that arises from the exercise of the right to freedom of expression is always composed of judges, even where the claim in the main proceedings is to be dispensed with by a jury as of right.

3. Member States shall take the measures necessary to ensure that, where a motion for dismissal as referred to in Article 5 is filed in relation to a claim that arises from the exercise of the right to freedom of expression, the claimant's burden of proof as regards the substantial merits of the claim is raised from the not manifestly unfounded nature of the claim, as provided for in Article 7(1), to a higher bar of clear and convincing likelihood of success.

4. This Article is without prejudice to national rules on privilege which are more favourable to the defendant.

### *Article 16*

*Capping damages*

1. Member States shall set reasonable and proportionate maximum amounts for awards for damages and interest recoverable by the claimant where a claim arises from the exercise of the right to freedom of expression.

2. Member States shall ensure that the maximum amounts referred to in paragraph 1 do not exceed the median equivalized net income as it results for each country from most recent official statistics.

3. Member States shall ensure that the court or tribunal before which the claim is asserted shall retain the possibility to derogate from the maximum amounts set pursuant to paragraph 1 when awarding damages to the claimant if it is satisfied that the statements to which the claim relates were made by the defendant in bad faith with the intention to harm the claimant's reputation or good name.

4. This Article is without prejudice to national rules on the capping of damages which are more favourable to the defendant.

# *CHAPTER IV*

## *ASSISTANCE, SUPPORT AND PROTECTION*

### *Article 17*

*Financial assistance*

1. Member States shall ensure that defendants against whom a claim is asserted which arises from public participation on matters of public interest have access to legal assistance free of charge in accordance with rules and principles established in national law.

2. Free legal assistance services pursuant to paragraph 1 may be set up and provided for by public or non-governmental organisations and may be organised on a professional or voluntary basis.

3. Member States shall take the necessary measures to ensure that procedural costs related to the filing of a motion as referred to in Article 5 do not constitute financial obstacles for defendants to effectively exercise the right to seek dismissal. These may include the limitations of applicable court fees and granting access to legal aid in accordance with rules and principles established in national law.

4. Member States shall take the necessary measures to ensure that no procedural consequence is attached to the failure by the defendant to pay procedural costs, which may negatively affect the defendant's right of defence or influence the outcome of proceedings.

### *Article 18*

*Third party interventions in the proceedings*

Member States shall take the necessary measures to ensure that, in proceedings where a motion as referred to in Article 5 is filed, the court or tribunal competent to examine the motion may accept and consider communications, information and documentation submitted by non-governmental third-parties, including organisations established to safeguard or promote the rights of persons engaging in public participation, that are relevant for the determination of the case.

### *Article 19*

*Substitute party in proceedings*

Member States shall take the necessary measures to ensure that defendants against whom a claim is asserted which arises from public participation on matters of public interest can be replaced in the proceedings by a substitute party bearing responsibility for the defendant's behaviour.

### *Article 20*

*Support and protection measures*

1. Member States shall take the necessary measures to ensure that defendants against whom a claim is asserted that arises from public participation on matters of public interest have access to confidential support services free of charge.

2. Such support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

3. Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect persons filing a successful motion for dismissal as referred to in Article 5 from intimidation and from retaliation, including against the risk of emotional or psychological harm. When necessary, such measures shall also include procedures established under national law for their physical protection and that of their family members.

# *CHAPTER V*

## *DETERRENT MEASURES*

### *Article 21*

*Penalties*

1. Member States shall lay down the rules on civil penalties applicable in the event that a dismissal decision is taken by a court or tribunal pursuant to Article 6. The penalties may take the form of fines. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall ensure that, when the claimant of the claim which is the object of a dismissal decision pursuant to Article 6 is a legal person, penalties established under this Article are also imposed on any natural person who, based on a leading position within the legal person or an authority to take decisions on its behalf, acting either individually or as part of an organ of the legal person, is deemed to have taken part in the decision of initiating the claim.

3. When establishing rules on penalties for the purpose of paragraph 1, Member States shall ensure that due consideration is given to the following by the competent authority or court or tribunal determining the amount of the penalty:

   (a) the abusive nature of claims;

   (b) the excessive or unreasonable nature of claims;

   (c) the damages suffered by the defendant;

   (d) the existence of previous dismissal decisions pursuant to Article 6 relating to disputes brought by the same claimant;

   (e) the economic situation of the claimant. In the case the claimant is a legal person, this should be assessed having regard to its global turnover for the preceding fiscal year.

4. When deciding about the allocation of revenues from penalties Member States shall take into account the public interests concerned.

5. Member States may provide that the penalties established pursuant to this Article also apply to claimants initiating abusive lawsuits against public participation by means of other actions than those covered by this Directive, including criminal complaints.

### *Article 22*

*Limitations on instituting other proceedings*

Member States shall take the measures necessary to empower the court or tribunal taking a dismissal decision pursuant to Article 6 to prevent the party that initiated the claim from instituting other proceedings on the same matter or closely linked to it, including by introducing rules on prior authorization or admissibility conditions, with due regard to the right to access to a court.

### *Article 23*

*Publicity*

1. Member States shall establish a register of court decisions concerning matters governed by this Directive. Such register shall be made publicly accessible free of charge at point of use, in accordance with Union and national rules on the protection of personal data. Entries in the register shall in no way affect the rights of the parties in any other judicial proceedings.

2. Member States shall take the necessary measures to ensure that, when the claimant of the claim which is the object of a dismissal decision taken in accordance with Article 6 is a natural or legal person contracted or awarded procurement by a public body or entity to provide goods or services to the public, the dismissal decision is notified to the contracting or procuring public body or entity.

# *CHAPTER VI*

## *ABUSIVE LAWSUITS AGAINST PUBLIC PARTICIPATION INITIATED IN THIRD COUNTRIES*

### *Article 24*

*Obligation to provide for appropriate remedies*

1. Member States shall take the measures necessary to ensure that where a claim that arises from public participation on matters of public interest is filed in a court or tribunal of a state outside the Union against a defendant who is domiciled in a Member State's territory, the defendant has access to appropriate remedies before the national courts or tribunals of such Member State as are necessary to dissuade the pursuance of the claim in those other courts.

2. The remedies referred to in paragraph 1 shall include the possibility to claim a summary award of damages in sums which are at least equal to the sums claimed in damages in those other courts seized, as well as the imposition of penalties established in accordance with Article 20 of this Directive.

# CHAPTER VII

## GENERAL AND FINAL PROVISIONS

### Article 25

*Training and awareness raising*

1. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges make available both general and specialist training to increase the awareness and technical knowledge of judges of abusive lawsuits against public participation.

2. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness and technical knowledge of lawyers of abusive lawsuits against public participation. Member States shall also encourage that those responsible for lawyers' professional ethics and standards take appropriate measures to deter and sanction as appropriate lawyers engaging in abusive litigation against public participation.

3. Member States shall make public funding available to encourage and support initiatives enabling persons engaging in public participation on matters of public interest such as journalists and civil society actors to receive adequate training on their rights and their obligations under national, Union and international law relevant to public participation, including professional ethics and standards.

4. Through their public services or by making available public funding, Member States shall support the existence of independent bodies capable of hearing complaints from and providing assistance to persons threatened or faced with abusive lawsuits against public participation, such as specialised ombudspersons.

### *Article 26*

*More favourable treatment*

Member States may maintain or introduce safeguards, remedies or redress mechanisms providing for a level of protection against abusive lawsuits against public participation higher than that provided by the provisions set out in this Directive.

### *Article 27*

*Transposition*

Member States shall take such measures as are necessary to transpose the provisions of this Directive, in accordance with their national judicial systems.

### *Article 28*

*Reporting, evaluation and review*

1. Member States shall provide the Commission with all relevant information regarding the implementation and application of this Directive.

2. Without prejudice to reporting obligations laid down in other Union legal acts, information provided by the Member States for the purpose of paragraph 1 shall include the following quantitative information, provided on an annual basis:

   (a) the number of motions for dismissal filed before national courts or tribunals pursuant to this Directive;

   (b) the number of claims in relation to which a motion for dismissal was filed before a national court or tribunal pursuant to this Directive concerning:

   - expressions related to matters of public interest contained in journalistic communications, publications or works, including editorial content;

- expressions related to matters of public interest contained in communications, publications or works of a political, scientific, academic, artistic, commentary or satirical nature;

- expressions related to matters of public interest made by a not-for-profit organization or group lawfully operating in a Member State.

(c) the number of claims which were the object of a dismissal decision pursuant to Article 6;

(d) the number of claims which were the object of a dismissal decision pursuant to Article 6 where the claimant was a natural or legal person contracted or awarded procurement by a public body or entity to provide goods or services to the public;

(e) the number of appeals filed against decisions on a motion to dismiss pursuant to Article 6;

(f) the number of ex officio dismissals, in particular in relation to claims that arise from public participation amounting to the exercise of the right to freedom of expression

(g) in relation to claims which were the object of a dismissal decision pursuant to Article 6, the length of proceedings from the commencement of the claim until the adoption of the dismissal decision.

3. Without prejudice to reporting obligations laid down in other Union legal acts, information provided by the Member States for the purpose of paragraph 1 shall include the following qualitative information, provided on an annual basis:

(a) information concerning the subject matter, scope and nature of claims in relation to which a motion for dismissal was filed before a national court or tribunal pursuant to this Directive;

(b) information concerning the application of the measures adopted pursuant to the provisions contained in Chapters IV, V and VI of this Directive.

4. On the basis of the information provided, the Commission shall, by no later than 3 years after the date of application of this Directive, submit a report to the European Parliament and the Council on its implementation and application. The report shall evaluate the way in which this Directive has functioned and consider the need for additional measures. The Commission shall make the report public and easily accessible.