

Dear Mr Lars Danielsson,

**We are writing as representatives of the members of the Coalition Against SLAPPs in Europe (CASE) to express our profound concern with the draft anti-SLAPP [compromise proposal](#) published by the Presidency of the Council of the EU.**

The proposed anti-SLAPP Directive published by the European Commission (EC) in April 2022 was [broadly welcomed](#) by CASE, though the coalition noted that certain areas of the proposal needed to be built upon in order to ensure meaningful protection against abusive lawsuits targeting public watchdogs such as journalists, human rights defenders, and civil society organisations engaging in public participation.

The compromise proposal goes in the opposite direction, watering down crucial protections and radically narrowing the scope of the procedural safeguards proposed by the EC, and fails to meet the expectations of the European Parliament, the European Union's most important democratic body.

**In particular, we are concerned that:**

- Article 4 of the EC's proposed directive together with Recital 22, which defined "Matters with cross-border implications" to include cases targeting acts of public participation relevant to more than one Member State, has been removed from the text, which as result leaves no pertinent guidance for a harmonised implementation of the Directive;
- "Manifestly unfounded" is defined so narrowly in the new Recital Paragraph 13(a) as to render the proposed early dismissal mechanism useless. In the new version of the proposal of a Directive, a manifestly unfounded claim is understood "as a claim which is so obviously unfounded that there is no scope for any reasonable doubt (..)". Most abusive lawsuits will not meet this far too high threshold;
- Article 15 on compensation of damages has been removed and other measures designed to protect people and civil society organisations targeted by SLAPPs and to deter the use of SLAPPs have been substantially watered down.

**The sum effect of these changes would be to gut the potential impact and efficacy of any future directive.**

Of the 570 European SLAPP cases [identified by CASE](#), for example, only 10% would qualify as "cross-border" using the interpretation applied in the Council's compromise proposal.

Such a high threshold for pre-trial dismissal, meanwhile, would in most cases render the proposed early dismissal mechanism entirely redundant: most EU Member States already have pre-trial mechanisms in place to remove meritless cases from the court system, and in most cases the threshold included in the compromise proposal represents a *lower hurdle* for SLAPP plaintiffs than existing mechanisms.

Furthermore, by removing compensatory damages, the compromise proposal leaves it to Article 14 (award of costs) and Article 16 (penalties) to provide a meaningful deterrent. Unfortunately, the proposal weakens both of these provisions, leaving it uncertain as to whether or not those who engage in the use of SLAPPs will be sanctioned - and ambiguous as to what form these sanctions will take.

It is difficult to see how the mechanisms proposed in the compromise proposal would make any material difference to those targeted by SLAPPs. It is crucial therefore that national governments act now to ensure that the European Council does not water down the provisions in the EC's proposed directive, but rather builds on them to ensure robust protections are in place against SLAPPs in Europe.

Signed by the Coalition Against SLAPPs in Europe (CASE)