

Governments' agreed stance on EU anti-SLAPP directive – a disappointing failure to support the adoption of robust safeguards for public watchdogs

Brussels, 12th June 2023 | CASE legal experts

A common position to a draft anti-SLAPP law endorsed by [the EU governments](#) on Thursday, 8 June 2023, heavily waters down the Commission's original proposal and takes a restrictive approach on some of its key provisions which would significantly limit the instrument's added value for SLAPP victims across the European Union.

CASE identified the five most concerning drawbacks contained in the position presented by the Council of the EU:

- A formalistic notion of what is a cross-border case for the purpose of the EU directive, which would leave outside its scope most SLAPPs aimed at silencing debate on matters of public interest of EU-wide relevance, just because the parties are in the same jurisdiction
- The exclusion from the directive's scope of civil claims brought in criminal proceedings
- Significant weakening of the early dismissal mechanism, including by means of a very restrictive definition of manifestly unfounded cases and by ruling out the possibility to appeal decisions refusing early dismissal
- The deletion of the provision on damage compensation in favour of SLAPP targets
- The extension of the transposition period to 3 years, against the background of increasing SLAPPs targeting journalists and rights defenders across the EU

It is now all the more important that the EU Parliament shows the firmest support for as robust as possible anti-SLAPP safeguards. We call on **JURI to put forward an ambitious text** with a view to the upcoming committee and plenary votes so that trilogies can kick start with a stronger basis.

CASE developed a list of key priorities that should guide lawmakers while negotiating the Commission's proposal

Maintain core components and strengths included in the Commission's proposal in the final law, including:

- broad personal scope, to encompass the full diverse range of SLAPP victims;
- innovative notion of cross-border relevance expanding the scope to cover certain domestic cases as well;
- early dismissal of SLAPP cases as a key procedural safeguard;
- security for costs, award of costs and damages on the defendant side;
- effective, proportionate and dissuasive sanctions.

Remove the dichotomy of “abusive proceedings” versus “manifestly unfounded proceedings”: early dismissal and other procedural safeguards and protection measures should apply to manifestly unfounded and abusive proceedings alike.

Replace the “manifestly unfounded” threshold with a requirement for the claimant to establish a “prima facie case” as to each essential element of the cause of action within the early dismissal mechanism.

Make sure security for costs include indirect costs and damages, such as legal representation and associated costs.

Make sure the award of costs and damages is automatic. As regards damage compensation in particular, victims should not have to make a separate claim.

“Cross-border” must be interpreted broadly, by rooting the cross-border relevance of the matter in the concept of the public interest, as opposed to the extent to which the issue at stake has practical implications for or in different member states.

Make sure the exception concerning “administrative matters” is interpreted narrowly enough to avoid frustrating protection of claims grounded in provisions of an administrative nature, such as GDPR claims.

Include a provision requiring member states to **review ethical standards** to discourage lawyers from engaging in SLAPP tactics.

Make third-party legal interventions in court broadly accessible, including to professional associations.

The new Directive should also apply to **pending cases**.

CASE has previously raised concerns regarding manoeuvres towards diluting meaningful anti-SLAPP protection for journalists and activists contained in the EC’s original initiative. In March, we wrote [a letter to the Swedish Presidency of the EU Council](#) about the draft compromise proposal urging that by heavily limiting key provisions instead of building on them further, the proposal runs contrary to the purpose of the anti-SLAPP Directive and undermines its spirit.