

European Commission's Proposed Directive to tackle SLAPPs **STRENGTHS, WEAKNESSES, and PRIORITIES FOR AMENDMENT**



CASE broadly welcomes the European Commission (EC)'s proposals for a new EU anti-SLAPP Directive as a crucial first step forward in tackling the growing problem of SLAPPs in Europe. The proposals provide key safeguards and set solid minimum standards which must now be built upon by EU institutions and member states to ensure robust protection against SLAPPs. For our full analysis of the EC's proposals see [here](#).

Core Components of the Proposed Directive

- Early Dismissal Mechanism and related safeguards including the **stay of proceedings** (Article 10), **accelerated procedure** (Article 11), and reversed **burden of proof** (Article 12) are particularly important, though the threshold of “manifestly unfounded” is **too low** to effectively filter out SLAPPs.
- Protective Measures including **security for costs and damages** (Article 8), a **full award of costs** against SLAPP claimants (Article 14) and **compensation for damages** (Article 15) including psychological harm are all important measures, though these can be strengthened (see Priority 4).
- Dissuasive Sanctions are provided for via “**effective, proportionate and dissuasive**” **penalties** (Article 16) for SLAPP claimants, though these should be extended to litigators (see Priority 7).

Other Strengths and Weaknesses

- The proposed Directive (“the Directive”) acknowledges that while SLAPPs often manifest as meritless lawsuits, they may also be identifiable via other hallmarks of abuse. It therefore **provides key indicators of abuse to help courts identify cases as SLAPPs**.
- Unfortunately, the Directive does this by **artificially splitting the concept of a SLAPP into two** - respectively “manifestly unfounded” and “abusive” court proceedings targeting public participation - and according to each a different layer of protection.
- The Directive has a **broad personal scope**, extending to any individual or legal entity (“natural or legal person”) engaging in public participation, whether brought by an individual or legal entity.
- The limitation in scope to cross-border cases is an **inherent limitation** of the proposed Directive, though this is mitigated by a **broad definition of “cross-border”**.
- The protection provided to SLAPP victims extends to those targeted in third countries, with an obligation to **refuse recognition and enforcement** of such cases.

8 Key Priorities for Lawmakers

1. All core components and strengths referred to above must be maintained in the final law.
2. The dichotomy of “abusive proceedings” versus “manifestly unfounded proceedings” **should be removed**, with all SLAPPs subject to proposed protective measures such as an early dismissal mechanism and dissuasive sanctions alike.
3. Lawsuits subject to the early dismissal mechanism should be subject to a **higher threshold**, with the words “manifestly unfounded” in Article 9(1) replaced with “unlikely to prevail at trial”.
4. Lawmakers should ensure that security for costs cover **indirect costs and damages** (including legal representation and associated costs); that cost awards are an **automatic feature** of the court's decision; and that compensation does not require the **filing of a separate formal claim**.
5. The temporal application of new anti-SLAPP rules should **extend to pending cases**.
6. Lawmakers should include a **new recital** (the opening text that sets out the purpose of the law) to ensure that a) the cross-border “relevance” of the act targeted is interpreted broadly and anchored in the notion of “public interest”, and b) the exception concerning “administrative matters” is interpreted widely enough to avoid frustrating protection of claims grounded in provisions of an administrative nature (e.g. GDPR claims).
7. Member states should be obliged to encourage regulatory bodies to **review ethical standards** to dissuade lawyers from engaging in SLAPP tactics.
8. The opportunity for third party interventions should be extended to any entity bearing an interest in the defence of the activity in question, including professional associations.