

FINAL COMPROMISE PROPOSALS

Anti-SLAAPs Directive

CULT opinion

23 05

Compromise Amendment 1

Covers: AM 63 SD,
Fall: AM 1 Rap, AM 62 GR

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on protecting persons *who engage in public participation from manifestly unfounded or abusive court proceedings* (“Strategic lawsuits against public participation (SLAPPs) (AM63 SD)

Compromise Amendment 2

Covers: AM 2 Rap, AM 65 SD, AM 66 GR, AM 64 RE

Recital 2

(2) Article 10(3) of the Treaty on European Union states that every Union citizen has the right to participate in the democratic life of the Union. The Charter of Fundamental Rights of the European Union (the ‘Charter’) provides, inter alia, for the rights to respect for private and family life (Article 7), the protection of personal data (Article 8), freedom of expression and information, which includes respect for the freedom and pluralism of the media (Article 11), **freedom of assembly and of association (Article 12)** (AM2 Rap, AM 64 RE, AM 65 SD, AM 66 GR) and to an effective remedy and to a fair trial (Article 47).

Compromise Amendment 3

Covers: AM 68 GR, AM 67 RE, AM 3 Rap, AM 4 Rap

Recital 3

(3) The right to freedom of expression and information as set forth in Article 11 of the Charter includes the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers **which is necessary in a democratic society** (AM 67 RE). Article 11 of the Charter should be given the meaning and scope of the correspondent Article 10 of the European

Convention on Human Rights (“ECHR”) on the right to freedom of expression, **covering also the protection of the reputation or rights of others and the prevention of disclosure of information received in confidence, such correspondence, having been** (AM 67 RE) interpreted by the European Court of Human Rights (“ECtHR”). **The right to freedom of expression and information is connected to other rights and freedoms, including the right to freedom of assembly and of association, as set forth in Article 12 of the Charter, and the freedom of the arts and sciences, including academic freedom, as set forth in Article 13 of the Charter** (AM 3 Rap, AM 68 GR).

Compromise Amendment 4

Recital 4

Covers: AM 5 Rap, AM70 GR, AM71 SD, AM 72 RE, AM 73 ECR

Fall:AM 69 EPP

(4) The purpose of this Directive is to provide protection to natural and legal persons who engage in public participation on matters of public interest **including online** (Am71 SD), in particular journalists and human rights defenders, **including civil society, NGOs and trade unions, as well as researchers, academics, students, artists, whistleblowers and publishers of journalistic and artistic works** (AM 70 GR, AM 71 SD, AM 72 RE) **against abusive** (AM 5 Rap) court proceedings, which are initiated **with the purpose of deterring** (Am69 EPP) them from public participation (commonly referred to as strategic lawsuits against public participation or ‘SLAPPs’), ~~while~~ **and to safeguarding the right to an effective remedy and to a fair trial** (AM73 ECR).

Compromise Amendment 5

Covers: AM 75 EPP, AM 76 RE, AM 77 Rap, AM78 SD, AM6 RAP, AM7 Rap

Falls: AM79 ECR

Recital 5

(5)**There is a pressing need to maintain the independence of the media from political and economic pressure, such as the one used through SLAPPs** (AM 75 EPP). Journalists **and press publishers** (AM6 Rap, AM 78 SD) play an important role in facilitating public debate and in the imparting and reception of information, opinions and ideas. It is essential that **they conduct their activities according to journalistic standards and charters and** are afforded the necessary space to contribute to an open, free and fair debate and to counter disinformation, information manipulation and interference. Journalists should be able to conduct their activities

effectively to ensure that citizens have access to a plurality of views in European democracies. **Journalists should be free to criticize without fear of prosecution or infringed right to freedom of expression and be ensured the protection, safety and empowerment. (AM 76 RE)**

Compromise Amendment 6

Covers: AM8 Rap, AM 82 GR, AM 83 SD

Fall: AM 80 NI, AM 81 ECR

Recital 7

(7) Human rights defenders also play an important role in European democracies, especially in upholding fundamental rights, democratic values, social inclusion, environmental protection and the rule of law. They should be able to participate actively in public life, **promote accountability** (AM 8 Rap, AM 83 SD), and make their voice heard on policy matters and in decision-making processes without fear of intimidation. Human rights defenders refer to individuals or organisations engaged in defending fundamental rights and a variety of other rights, such as environmental and climate rights, women's rights, LGBTIQ rights, the rights of the people with a minority racial or ethnic background **the rights of migrants, refugees and asylum seekers** (AM 82 GR), labour rights, **trade union rights** (AM 8 Rap, AM 83 SD) or religious freedoms. Other participants in public debate **online and offline** (AM 8 Rap, AM 82 GR) **may include** such as academics and researchers, **scientists, educators, artists, cultural workers, social media activists and whistleblowers** (AM 8 Rap, AM 82 GR, AM 83 SD).

Compromise Amendment 7

Covers: AM 9 Rap, AM 84 SD

Recital 7a

(7 a) Women, LGBTIQ and gender rights defenders play a crucial role in achieving a gender-equal Europe. They should be able to promote accountability and have their voice heard in any case of gender-based harassment, violence, abuse or abuse of power relations, without suffering a second wave of gender-based harassment as victims of SLAPPs.

Therefore, the objectives and provisions of this Directive are linked and should be interpreted towards the highest possible protection of gender-based SLAPP victims, also along with all relevant EU policies and legislation.

(7b) Special attention should be paid to ensure that this directive effectively helps to combat the discrimination that racial, religious and ethnic minorities are often subjected to. (AM 84 SD)

Compromise Amendment 8 and consolidated amendment 1

Covers: AM 10 Rap, AM 86 GR, AM 143 SD

Falls: AM 87 ECR, AM 85 EPP, AM 88 ECR

Recital 8

- (8) A healthy and thriving democracy requires that people are able to participate actively in public debate without undue interference by public authority or other powerful actors, be they domestic or foreign. In order to secure meaningful participation, people should be able to access reliable, ***objective and unbiased*** information, which enables them to form their own opinions and exercise their own judgement in a public space in which different views can be expressed freely. **Therefore, it is crucial to promote and support awareness raising about their rights and freedoms, critical thinking and media literacy including through education and training curricula in the member states, while enabling horizontally all relevant EU policies such as the Digital Education Plan 2021-2027 and the European Education Area. (AM 10 Rap, AM 86 GR) Adequate resources need to be invested to effectively inform citizens of their civic rights to public participation while the sharing of the best practices should be encouraged in EU level. Media literacy programmes in specific should be an essential instrument for Member States to protect their citizens against undue interference in the public debate. (AM 143 SD, AM 85 EPP)**

Compromise Amendment 9

Covers: AM 11 Rap, AM 89 RE, AM90 EPP, AM 91 SD, AM 92 GR

Fall: AM 93 EPP, 94 EPP, 95 EPP

- (9) To foster a **healthy and thriving environment** (AM 90 EPP) it is important to protect **all natural and legal persons who engage in public participation), in particular journalists and human rights defenders** (AM 89 RE) (AM 11 Rap) **and enable access to reliable information** (AM 91 SD) from court proceedings against public participation. Such court proceedings are not initiated for the purpose of access to justice, but to **exploit procedural instruments in order to** (AM 90 EPP) silence public debate typically using harassment and intimidation. **They are restricting investigations and legitimate information towards the public and therefore hindering the role of watchdogs and restraining the health of democracies.** (AM 89 RE)

Compromise Amendment 10

Covers: AM 12 Rap, AM 96 RE, AM 98 GR

Fall: AM 97 ECR

Recital 10

- (10) SLAPPs are typically initiated by powerful entities, for example individuals, lobby groups, corporations, **political parties** (AM 96 RE) and state organs. They often involve an imbalance of power between the parties, with the claimant having a more powerful financial or political position than the defendant does. Although not being an indispensable component of such cases, where present, an imbalance of power significantly increases the harmful effects of these proceedings, **shrinking the civic space for civil society to act and engage in public participation** (AM 98 GR) and **severely harming democracy** (AM12 Rap). **SLAPPs as unfounded or abusive court proceedings can be used in civil procedures, but also in civil claims brought in criminal proceedings, against public participation wishing to silence criticism and prevent public scrutiny to the detriment of a public debate** (AM 96 RE).

Compromise Amendment 11

Covers: AM 13 Rap, AM 99 RE, AM 100 SD, AM 102 SD, AM 14 Rap

Fall: AM 101 ECR, AM 103 ECR, AM 104 Rap, AM 105 Rap

Recital 11

- (11) Court proceedings against public participation may have an adverse impact on the credibility and reputation of **targeted natural or legal persons** (AM 13 Rap, AM 102 SD) and exhaust their financial and other resources. Because of such proceedings, the publication of information on a matter of public interest may be delayed or altogether avoided. **Moreover, court proceedings against public participation are often based on groundless accusations** (AM 99 RE). The length of procedures and the financial pressure may have a chilling effect on journalists and human rights defenders, **academics, researchers, artists and anyone active in public participation** (AM13 Rap). The existence of such practices may therefore have a deterrent effect on their work ~~by contributing to silencing critical voices, including~~ (AM 99 RE) self-censorship in anticipation of possible future court proceedings **as not all SLAPPs reach the court and often remain as a threat of a lawsuits** (AM 99 RE), which leads to the impoverishment of public debate to the detriment of society as a whole. **Furthermore, such instances may also create precedents that ultimately lead to hampering public participation, spread of disinformation and lack of trust within the Union** (AM 100 SD).

Compromise Amendment 12

Covers: AM 15 Rap, AM 106 RE, AM 107 GR AM 153 SD, AM 33B Rap, AM 16 Rap

- (16) Public participation should mean any statement or activity by a natural or legal person expressed or carried out **including in the digital environment** (AM 15 Rap, AM 107 GR) in exercise of the right to freedom of expression and information on a matter of public interest, such as the creation, exhibition, advertisement or other promotion of journalistic **content, news and current affairs** (AM 106 RE, AM 53 SD), political, scientific, academic, artistic, **documentary**, commentary or satirical communications, publications or works **regardless of the medium or format**, and any preparatory activities directly linked thereto. It can also include activities related to 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 or 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, administrative and judicial claims and participation in public hearings and **any other activity which serves the disclosure, dissemination or promotion to the public** (AM 33 Rap). Public participation should also include preparatory, supporting or assisting activities that have a direct and inherent link to the statement or activity in question and that are targeted to stifle public participation. In addition, it can cover other activities meant to inform or influence public opinion or to further action by the public, including activities by any private or public entity in relation to an issue of public interest, such as the organisation of or participation to research, surveys, campaigns or any other collective actions.

Compromise Amendment 13

Covers: AM 17 Rap, AM 108 GR, AM 109 SD

Fall: AM 110 ECR, AM 111 EPP

- (18) The notion of a matter of public interest should include also quality, **composition**, safety or other relevant aspects of goods, products or services, **country of origin** (AM 108 GR), **including the conditions under which these are produced or provided** (AM17 Rap, AM 109 SD) where such matters are relevant to public health, safety, the environment, climate or enjoyment of fundamental rights. A purely individual dispute between a consumer and a manufacturer or a service provider concerning a good, product or service should be covered only when the matter contains an element of public interest, for instance concerning a product or service which fails to comply with environmental or safety standards, **labour rights**,

consumer rights or human rights, including the principle of non- discrimination. (AM 17 Rap, AM 109 SD), **according to relevant legislation enforced in those areas. (RE)**

Compromise Amendment 14

Covers: AM 113 GR, AM 114 SD, AM 112 EPP, AM 115 RE

Falls: AM 18 Rap

Recital 20

(20) Abusive court proceedings typically involve litigation tactics used in bad faith such as **exaggerated or excessive damage claims, requesting disproportionate prior restraint measures** (AM18 Rap, AM 114 SD) delaying proceedings, causing disproportionate costs to the defendant in the proceedings or forum shopping. ~~These tactics are used by~~ **In these cases where the claimant is in a significantly more influential position than the defendant, who is acting on a matter of public interest, it may be considered that the claimant does not primarily seek to benefit from his basic right to** ~~for other purposes than gaining~~ access to justice. Such ~~tactics~~ **proceedings may be (AM 112 EPP)** ~~are often, although not always,~~ combined with various forms of intimidation, harassment or threats. **In this context, attention should also be paid to gender-based harassment as a particularly vicious indicator/form of abuse** (AM 113 GR).

Compromise Amendment 15

Covers: AM 19 Rap, AM 116 GR, AM 119 SD, 121 EPP

Fall: AM 117 EPP, AM 118 ECR, 120 RE, 122 Rap, 20 Rap

(22) A matter should be considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised. Even where both parties are domiciled in the same Member State as the court seised, a matter should be considered to have cross-border implications in two other types of situations. The first situation is where the specific act of public participation concerning a matter of public interest at stake is relevant to more than one Member State **or accessible, including online** (AM 119 SD). That includes for instance **acts which have a cross-border nature or dimension, such as** (AM19 Rap) public participation in events organised by Union institutions, such as appearances in public hearings, or **widely disseminated publications, included in the digital environment. It shall also include** (AM19 Rap) **statements or activities including social media campaigns and online media coverage (AM 119 SD)** on matters which the public of more

than one Member State may legitimately take an interest on, and therefore are or may become of relevance to more than one Member State (AM 19 Rap, AM 116 GR), such as **economic or political activity of cross-border relevance**, cross-border pollution **cross-border enjoyment or abuse of fundamental rights or freedoms under EU law** (AM 19 Rap), or allegations of money laundering with potential cross-border involvement. The second situation where a matter should be considered to have cross-border implications is when the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State. These two types of situations take into consideration the specific context of SLAPPs.

Compromise Amendment 16

Covers: AM 21 Rap, AM 124 RE, AM 125 SD, AM 126 GR, AM 128 ECR

Falls: AM 127 ECR

Recital 26

- (26) To provide the defendant with an additional safeguard, there should be a possibility to grant **them** (AM 126 GR) a security to cover **costs, including** (AM 21 Rap, AM 126 GR) procedural **costs, legal representation** (AM21 Rap, AM 125 SD) costs and/or damages, when the court considers that even if the claim is not manifestly unfounded, there are elements indicating an abuse of procedure and the prospects for success in the main proceedings are low. A security does not entail a judgement on the merits but serves as a precautionary measure ensuring the effects of a final decision finding an abuse of procedure. ~~It should be for Member States to decide whether a security should be ordered by the court on its own motion or upon request by the defendant.~~ (AM 124 RE)

Compromise Amendment 17

Covers: AM 22 Rap, AM 131 RE

Fall: AM 129 ECR, AM 130 NI

- (30) If a defendant has applied for early dismissal, it should be for the claimant in the main proceedings to prove in the accelerated procedure that the claim is not unfounded. This does not represent a limitation of access to justice, taking into account that the claimant carries the burden of proof in relation to that claim in the main proceedings and only needs to meet the much lower threshold of showing that the claim is not ~~manifestly~~ unfounded **and is not abusive** (AM22 Rap, AM 130 Rap) in order to avoid an early dismissal.

Compromise Amendment 18

Covers: AM 23 Rap, AM 132 GR

Fall: AM 133 RE, AM 134 ECR, AM 135 NI, 24 Rap

Recital 31

- (31) Costs should include all costs of the proceedings, including the full costs of legal representation incurred by the defendant unless such costs are excessive. Costs of legal representation exceeding amounts laid down in statutory fee tables should not be considered as excessive per se. **Where the national law does not guarantee the compensation of costs for legal representation beyond statutory fee tables, the court should be enabled to indemnify costs not encompassed in statutory fee tables through the award of damages** (AM23 Rap, AM 132 GR). Full compensation of damages should include both material and immaterial damages, such as physical and psychological harm.

Compromise Amendment 19

Covers: AM 25 Rap, AM 137 SD, AM 138 RE, 26 Rap

Fall: AM 136 ECR, 139 NI

- (33) In the cross-border context, it is also important to recognize the threat of SLAPPs from third countries targeting journalists, human rights defenders and other persons engaged in public participation who are domiciled in the European Union. They may involve excessive damages awarded against **persons engaging in public participation, in particular journalists, human rights defenders and others** (AM 25 Rap, AM 137 SD). Court proceedings in third-countries are more complex and costly for the targets. To protect democracy and freedom of expression and information in the European Union and to avoid that the safeguards provided by this Directive are undermined by recourse to court proceedings in other jurisdictions, it is important to provide protection also against unfounded and abusive court proceedings in third countries.

Compromise Amendment 20

Covers: AM 28 Rap, AM 140 RE, AM 141 GR, AM 29 Rap

Fall: AM142 RE, AM 27 Rap, AM 30 Rap

Recital 34a (new)

(34 a (new)) This Directive shall keep monitoring on the status of media freedom, pluralism and SLAPPs, including through the Media Freedom Rapid Response, which is crucial to provide updated data and alarms highlighting cases of possible forum shopping between member states, based on data which member states have to regularly provide and collaborate (AM 28 Rap) . *Additionally, regular and adequate data collections across Member states are essential in the cross-border context in order to develop and raise awareness on SLAPP cases. Member states should collect data on SLAPP cases such as the number of unfounded or abusive court proceedings against public participation, the number of dismissed cases, and figures on cross-border elements, description of legal basis and figures about acts of public to monitor and report on such cases across the EU, while taking arrangements to ensure protections of the rights of those involved, in particular the victims of these court procedures (AM 140 RE).*

Compromise Amendment 21

Covers: AM 29 Rap, AM 94 EPP

Falls: AM 95 EPP

Recital 35a(new)

(35 a) Member States, in close cooperation with relevant stakeholders including professional associations, other social partners and civil society organisations, should take appropriate measures to ensure that the deontological rules that govern the conduct of legal professionals and the disciplinary sanctions for violation of those rules consider and include appropriate measures to discourage abusive lawsuits against public participation. *In order to prevent the misuse of those measures and rules, an emphasis should be put on proper training and upskilling of legal professionals dealing with SLAPP cases, taking fully into account the established case-law of the European Court of Human Rights.* This may include encouraging self-regulation by associations of legal professionals and/or, when this is consistent with national law and in the full respect of the independence of the profession, take initiatives for legislation or co-regulation.

Compromise Amendment 22

Covers: AM 144 SD, AM 145 SD, AM146.

(39) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...] its wish to take part in the adoption and application of this Directive.]

(39 a) SLAPP cases targeting media outlets may aim to cause their closing down. A specific tool should be envisaged in order to ensure the economic sustainability of media organisations facing such cases and their ability to resist such attacks, as part of securing a framework favourable to media pluralism.

(39 b) Data should be more systematically collected and monitored to properly evaluate the phenomenon and its evolution over time, mapping the different cases identified, analyzing the trends and reporting regularly, publishing information in accessible formats while ensuring the protection of fundamental rights including the right to privacy and to the protection of personal data.

39 c) *Given the profound impact of these SLAPPs cases on the potential target's lives and mental health issues that can occur, Member states should set up specific psychological support to accompany them*

Compromise Amendement 23

Covers: AM 147 RE, AM 148 GR, AM 149 SD

Fall: AM 150 EPP, AM 31 Rap,

Article 1- Subject matter

This Directive provides safeguards against ~~manifestly~~ unfounded or abusive court proceedings (AM 31 Rap, AM 148 GR) in civil matters, **including civil claims brought in criminal proceedings** (AM 147 RE) with cross-border implications brought against natural and legal persons, in particular journalists and human rights defenders, **engaged** in public participation **including online** (AM 149 SD).

Compromise Amendement 24

Covers: AM 32 Rap, AM 151 GR, AM 221 SD

Article 2- Scope

This Directive shall apply to any type of proceedings (AM 32 Rap) of a civil or commercial nature with cross-border implications, **commenced or continued before a national court at the time of its entry into force** (AM 151 GR). **It shall apply to existing and ongoing charges against public participation** (AM 221 SD). **The Directive shall extend to any type of claim, including interim and precautionary measures, counteractions or other particular type of remedies, and irrespective of** (AM 32 Rap) the nature of the court or tribunal. It shall **include civil claims brought in criminal proceedings**. **It shall not extend to claims invoking** (AM 32 Rap) the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

Compromise Amendement 25

Covers: AM 152 GR, AM 154 RE, AM 155 EPP, AM 33A Rap, 34 Rap, AM, 157 SD, AM 158 GR, AM 159 EPP, 163 RE, 164 GR, AM 165 GR, AM 39 Rap, AM 170 SD, AM 171 EPP, AM 172 RE, AM 38 Rap, AM 35 Rap, AM 169 SD

Fall: AM 156 ECR, AM 160 ECR, AM 161 EPP, AM 166 EPP, AM 167 ECR, AM 168 RE, AM 173 ECR, AM 162 EPP, 36 Rap, 37 Rap

Article 3-Definitions

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

1. ‘public participation’ means any statement or activity, **including in the digital environment** (AM 33 Rap) by a natural or legal person expressed or carried out in the exercise of the right to freedom of expression and information on a matter of public interest, and **connected** (AM 33 Rap) preparatory, supporting or assisting action directly linked thereto **which may result from the exercise of other rights and freedoms including academic freedom, freedom of science, artistic freedom, freedom of culture** (AM 33 Rap, AM 152 GR, AM 154 RE). This **may notably include, but is not exhaustive to, activities cited in Recital 16**.

2. ‘matter of public interest’ means any matter which affects the public to such an extent that the public may legitimately take an interest in it, in areas such as:

- (a) public health, safety, the environment, climate, cultural and societal diversity, **consumer or labour rights** (AM 157 SD), **education, culture** or enjoyment of fundamental rights **such as freedom of expression and information, artistic freedom, media freedom and pluralism** (AM 34 Rap), **non-discrimination, gender equality and protection on violence against women** (AM 158 GR);
- (b) activities of a person or entity in the public eye or of public interest;
- (c) matters under public consideration or review by a legislative, executive, or judicial body, or any other public official proceedings;

- (d) allegations of corruption, fraud, **tax evasion** (AM 162 EPP), **abuse of power** (AM 163 RE) or criminality;
- (e) **artistic, cultural, scientific and research activities and** (AM 164 GR, AM 36 Rapp) activities aimed to fight disinformation;
- (e a) **abuse or misuse of power by state or EU actors** (AM165 GR)

3. ‘abusive court proceedings against public participation’ mean court proceedings brought in relation to public participation that are fully or partially unfounded and have as their main purpose to prevent, restrict or penalize public participation. Indications of such a purpose can be:

- (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof;
- (aa) **the detrimental position of the target resulting from imbalances in financial and legal resources;** (AM 38 Rap, AM 169 SD)
- (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
- (b a) **the litigation tactics deployed by the claimant, including as regards the choice of jurisdiction and the use of dilatory tactics;** (AM, 39 Rap, AM 170 SD)
- (b b) **litigation tactics used in bad faith to restrict the freedom of expression and information with the intent to silence or restrain public scrutiny on a matter of legitimate public interest** (AM 172 RE).
- (c) intimidation, harassment or threats on the part of the claimant or his or her representatives **in relation to the subject of the claim** (AM 171 EPP).

Compromise Amendment 26

Covers: AM 40 Rap, AM 177 SD

Fall: AM 174 EPP, AM 175 EPP, 176 EPP, AM 178 EPP, AM 41 Rap

Article 4- Matters with cross-border implications

1. For the purposes of this Directive, a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised.
2. Where both parties to the proceedings are domiciled in the same Member State as the court seised, the matter shall also be considered to have cross-border implications if:
 - (a) the act of public participation concerning a matter of public interest against which court proceedings are initiated is relevant to more than one Member State, or **either due to the cross-border nature or dimension of the act itself, or due to the interest which the public in different Member States may take in the matter concerned by the act;** or (AM 177 SD)

(b) the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State.

Compromise Amendment 27

Covers: AM 182 GR, AM 44 Rap, AM 183 SD

Fall: AM 179 EPP, AM 180 SD, AM 181 RE, AM 43 Rapp AM 42 Rap,

Article 5- Applications for procedural safeguards

1. Member States shall ensure that when court proceedings are brought against natural or legal persons on account of their engagement in public participation, those persons can apply for:

- (a) security in accordance with Article 8;
- (b) early dismissal of unfounded court proceedings in accordance with Chapter III;
- (c) remedies against abusive court proceedings in accordance with Chapter IV.

2. Such applications shall include:

- (a) a description of the elements on which they are based;
- (b) a description of the supporting evidence.

3. Member States **shall** (AM 44 Rap, AM 182 GR, AM 183 SD) provide that measures on procedural safeguards in accordance with Chapters III and IV can be taken by the court or tribunal seised of the matter ex officio.

Compromise Amendment 28

Covers: AM 45 Rap, AM 185 SD, AM 186 GR, AM 187 RE

Fall: AM 184 SD, AM 188 ECR

Article 7- Third party intervention

Member States shall take the necessary measures to ensure that a court or tribunal seised of court proceedings against public participation may accept that **entities** (AM 45 Rap, AM 185 SD, AM 186 GR, AM 187 RE) safeguarding or promoting the rights of persons engaging in public participation, **such as non-governmental organisations, professional and representative associations, trade unions and other collective bodies acting in the interest of the defendant** (AM 45 Rap, AM 185 SD, AM 186 GR, AM 187 RE) may take part in those proceedings, either in

support of the defendant or to provide information **or opinion**. **This provision is without prejudice to existing rights of representation and intervention as guaranteed by other Union or national rules** (AM 45 Rap).

Compromise Amendment 29

Covers: AM 46 Rap, AM 190 GR, AM 47 Rap

Fall: AM 189 ECR

Article 8- Security

Member states shall ensure that in court proceedings against public participation, the court or tribunal seised has the power to require the claimant to provide security for **costs, including** (AM 46 Rap, AM 190 GR) procedural costs, **legal representation and associated** (AM 46 Rap, AM 190 GR) costs and damages, if it considers such security appropriate in view of presence of elements indicating abusive court proceedings.

Compromise Amendment 30

Covers: AM 48 Rap, AM 191 RE, AM 192 SD

CHAPTER III

Early dismissal of unfounded court proceedings

(Reestablishing original Commission wording)

Compromise Amendment 31

Covers: AM 197 SD, AM 49 Rapp

Fall: AM 193 ECR, AM 196 RE, AM 194 SD, AM 195 SD, AM 198 ECR

Article 9- Early dismissal

1. Member States shall empower courts and tribunals to adopt an early decision to dismiss, in full or in part, unfounded **lawsuits (AM 49 Rapp)** against public participation
2. Member States **shall** (AM 197 SD) establish time limits for the exercise of the right to file an application for early dismissal. The time limits shall be proportionate and not render such exercise impossible or excessively difficult.

Compromise Amendment 32

Covers: AM 50 Rap, AM 200 SD, AM 201 RE, AM 51 Rap

Falls: AM 199 ECR

Article 12- Burden of proof

Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to prove that the claim is not unfounded.

Pursuant to paragraph 1, the court shall refuse to grant early dismissal only where the claimant has established a prima facie case as to each essential element of the cause of action and where the claim is not characterised by elements of abuse (AM 51 Rap).

Compromise Amendment 33

Covers: AM 52 Rap

Falls: AM 202 NI, AM53 Rap

Article 13- Appeal

Member States shall ensure that a decision refusing or granting early dismissal pursuant to Article 9 is subject to an appeal.

Compromise Amendment 34

Covers: AM 54 Rap, AM 203 GR, AM 205 RE, AM 55 Rap, AM 207 SD

Fall: AM 204 NI, AM 206 SD

Article 14- Award of costs

Member States shall take the necessary measures to ensure that a claimant who has brought abusive court proceedings against public participation **are** (AM 205 RE) ordered to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant, unless such costs are excessive. **This award of costs should be an automatic feature of the court's decision within the same proceedings relating to the given abusive lawsuit (AM 203 GR).**

Where the national law does not guarantee the compensation of costs for legal representation beyond statutory fee tables, the court should be enabled to

indemnify costs not encompassed in statutory fee tables through compensation of damages pursuant to Article 15 (AM 55 Rap).

Compromise Amendement 35

Covers: AM 208 GR, AM 209 SD, AM 210 SD, AM 57 Rap, AM 59 Rap, AM 211 SD

Fall: AM56 Rap, AM58 Rap, AM 212 NI, AM 213 SD, AM 214 NI

Article 15- Compensation of damages

Member States shall take the necessary measures to ensure that a natural or legal person who has suffered harm, ***regardless of its being physical or psychological*** (AM 209 SD) as a result of abusive court proceedings against public participation is able to claim and to obtain full compensation for that harm, **including any loss of income, reputation or opportunity** (AM 210 SD). **To ensure that accessing such compensation is not a burden for the victims and to avoid perpetuating the negative impact of the SLAPPs on the victims, this compensation shouldn't require the filing of a separate formal claim by the defendant and should come as an automatic feature of the proceedings (AM 208 GR).**

Compromise Amendement 36

Covers: AM 218 RE, AM 60 Rap, AM 61 Rap, AM 219 RE

Article 17-Grounds for refusal of recognition and enforcement of a third-country judgment

Member States shall ensure that the recognition and enforcement of a third-country judgment in court proceedings on account of public participation by natural or legal person domiciled in a Member State is refused as manifestly contrary to public policy (ordre public) if those proceedings would have been considered unfounded or abusive if they had been brought before the courts or tribunals of the Member State where recognition or enforcement is sought and those courts or tribunals would have applied their own law.

Compromise Amendement 37

Covers: AM 220 RE, AM 222 RE, AM 223 RE

Article 21- Transposition into national law

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **[1 year (AM 220 RE)]** from the

date of entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

2 a. Member States shall support awareness raising campaigns on unfounded or abusive court proceedings against public participation organised among others by national entities, including National Human Rights Institutions and civil society organizations (AM 222 RE).

2 b. Member States shall, taking into account their institutional arrangements on judicial statistics, entrust one or more authorities to be responsible to collect and aggregate, in full respect of the rights to privacy and the protection of data data on unfounded or abusive court proceedings against public participation initiated in their jurisdiction. Member States should ensure that one authority is responsible to coordinate the information and report the aggregated data collected at national level to the Commission on a yearly basis starting by the end of term (AM 223 RE).