Presentation by the European Commission on the Commission’s recent ‘anti-SLAPP package’

at the third Extraordinary Meeting of the Parties to the Aarhus Convention in Geneva on 24 June 2022

Problem definition

The use of SLAPPs (“Strategic Lawsuits Against Public Participation”) is on the rise in the European Union and elsewhere.

SLAPPs are manifestly unfounded or abusive court proceedings. They are a particular form of harassment increasingly used against journalists, human rights defenders and others engaged in public participation in a matter of public interest and upholding democratic values and fundamental rights.

A stark example

A stark example is that of Maltese journalist Daphne Caruana Galizia who was murdered in 2017.

At the time of her assassination she was facing over 40 civil and criminal libel and defamation proceedings related to her investigate work.

The majority of SLAPPs are defamation lawsuits, but any type of claim can be used to file a SLAPP.

The Commission’s anti-SLAPP package

On 3 December 2020, the European Democracy Action Plan has announced an initiative to protect journalists and other actors from strategic lawsuits against public participation (SLAPP). The Commission has followed up by adopting its anti-SLAPP package on 27 April 2022.

The package consists of two specific measures:

- First, the EU intends to adopt legislative measures: the Commission proposed targeted legislation (a Directive), which would provide procedural safeguards against SLAPP in cross-border civil proceedings.

- Second, the legislative measures are accompanied by non-legislative measures, notably by a Commission Recommendation to Member States.

In addition, the package also includes a third document, which includes Evidence on SLAPPs. This is provided in a Staff Working Document accompanying the initiative.

Directive – scope and applicability

The proposed Directive covers cross-border civil and commercial matters. It does not cover criminal or administrative litigation, or purely domestic litigation. These limitations on scope are due to the legal basis of the proposal, which is Article 81(2) TFEU.

Within these limitations, however, it was nevertheless possible to define the scope of applicability broadly.
First, the proposed Directive has a broad personal scope: it covers natural and legal persons; journalists, human rights defenders and others. Importantly from the perspective of the Aarhus Convention, environmental and climate activists also benefit of the protection provided. The proposed Directive protects broadly natural and legal persons on account of their engagement in public participation on a matter of public interest – and the definition of “matters of public interest” specifically refers to environment and climate.

Secondly, the proposed Directive also defines the notion of ‘matters with cross-border implications’ broadly to take into account the specific nature of SLAPPs.

**Directive – the three pillars of protection**

The proposed Directive offers **three key pillars of protection:**

- First, early dismissal of manifestly unfounded court proceedings.
- Second, it offers other remedies against abusive court proceedings: award of costs, compensation of damages and penalties; the claimant can also be required to provide a security to cover costs and damages.
- Third, the proposed Directive provides protection against third-country SLAPP-judgments.

**Recommendation**

The Recommendation covers all types of cases (civil, criminal, administrative) and both domestic and cross-border cases.

Key elements of the Recommendation include

- **Training** for legal professionals and potentials targets of SLAPP.
- **Awareness raising**: including by civil society organisations.
- **Support mechanisms**, including legal assistance.
- **Data collection, reporting and monitoring**.