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## Ending Gag Lawsuits in Europe: Protecting Democracy and Fundamental Rights

Nicholas Aiossa · Wednesday, November 18th, 2020

### The problem: gag lawsuits against public interest defenders

The EU must end gag lawsuits used to silence individuals and organisations that hold those in positions of power to account. Strategic Lawsuits Against Public Participation (SLAPP) are lawsuits brought forward by powerful actors (e.g. companies, public officials in their private capacity, high profile persons) to harass and silence those speaking out in the public interest. Typical victims are those with a watchdog role, for instance: journalists, activists, informal associations, academics, trade unions, media organisations and civil society organisations.

Recent examples of SLAPPs include [PayPal suing SumOfUs](#) for a peaceful protest outside PayPal's German headquarters; co-owners of Malta's [Satabank suing blogger Manuel Delia](#) for a blog post denouncing money laundering at Satabank; and [Bollore Group suing Sherpa and ReAct in France](#) to stop them from reporting human rights abuses in Cameroon. In Italy [more than 6,000 or two-thirds of defamation lawsuits](#) filed against journalists and media outlets annually are dismissed as meritless by a judge. When Maltese journalist [Daphne Caruana Galizia was brutally killed](#), there were 47 SLAPPs pending against her.

SLAPPs are a threat to the EU legal order, and, in particular:

- **A threat to democracy and fundamental rights.** The EU is founded on the rule of law and respect for human rights. SLAPPs impair the right to freedom of expression, to public participation and to assembly of those who speak out in the public interest, and have a chilling effect on the exercise of these rights by the community at
- **A threat to access to justice and judicial cooperation.** Cross-border judicial cooperation relies on the principles of effective access to justice across the Union and mutual trust between legal systems. That trust must be based on the legally enforceable upholding of common values and minimum To the extent that they distort and abuse the system of civil law remedies, SLAPPs undermine the mutual trust between EU legal systems: member states must be confident that rulings issued by other member states' courts are not the result of abusive legal strategies and are adopted as the outcome of genuine proceedings.
- **A threat to the enforcement of EU law, including in connection to the internal market and the protection of the EU budget.** The effective enforcement of EU law, including the proper functioning of the internal market, depends on the scrutiny of the behaviour of individual entities by the EU, member states and – crucially – informed individuals. Watchdogs, be it media or civil society actors, play a key enforcement role. Therefore, the absence of a system which safeguards

public scrutiny is a threat to the enforcement of EU. The same reasoning applies to the management of EU programmes and budget, which cannot be monitored through the sole vigilance of the European Commission.

- **A threat to freedom of movement.** The absence of rules to protect watchdogs from SLAPP has an impact on the exercise of the Treaty's fundamental freedoms, since it affects the ability of media, civil society organisations and information services providers to confidently operate in jurisdictions where the risk of SLAPPs is higher, and discourages people from working for organisations where they can be the target of

### **The solution: an EU set of anti-SLAPP measures**

The EU can and must end SLAPPs by adopting the following complementary measures to protect all those affected by SLAPPs:

#### **1. An anti-SLAPP directive**

An anti-SLAPP directive is needed to establish a Union-wide minimum standard of protection against SLAPPs, by introducing exemplary sanctions to be applied to claimants bringing abusive lawsuits, procedural safeguards for SLAPP victims, including special motions to contest the admissibility of certain claims and/or rules making the burden shifting to the plaintiff to demonstrate a reasonable probability of succeeding in such claims, as well as other types of preventive measures. The Whistle-Blower Directive sets an important precedent protecting those who report a breach of Union law in a work-related context. Now the EU must ensure a high standard of protection against gag lawsuits for everyone who speaks out – irrespective of the form and the context – in the public interest.

The legal basis for an anti-SLAPP directive is to be found in multiple provisions of the Treaty; for example, Article 114 TFEU on the proper functioning of the internal market, Article 81 TFEU on judicial cooperation and effective access to justice and Article 325 TFEU on combating fraud related to EU programmes and budgets.

#### **2. The reform of Brussels I and Rome II Regulations**

Brussels I Regulation (recast) contains rules which grant claimants the ability to choose where to make a claim. This must be amended to end forum shopping in defamation cases, which forces defendants to hire and pay for defence in countries whose legal systems are unknown to them and where they are not based. This is beyond the means of most and falls foul of the principles of fair trial and equality of arms.

Rome II Regulation does not regulate which national law will apply to a defamation case. This allows claimants to select the most favourable substantive law and therefore leads to a race to the bottom. Today, victims may be subject to the lowest standard of freedom of expression applicable to their case.

#### **3. Support all victims of SLAPPs**

Funds are needed to morally and financially support all victims of SLAPPs, especially with legal defence. Justice Programme funds should be used to train judges and practitioners, and a system to publicly name and shame the companies that engage in SLAPPs, for example in an EU register, should be created.

Finally, the EU must ensure that **the scope of anti-SLAPP measures include *everybody* affected by SLAPPs**, including journalists, activists, trade unionists, academics, digital security researchers, human rights defenders, media and civil society organisations, among others.

This paper was signed by the following 119 organisations:

Abalone Alliance Safe Energy Clearinghouse

Access Info Europe

Access Now

ACT Alliance Advocacy to the EU

ActionAid International

Adéquations

Amigas de la Tierra

Amis de la Terre France ANTICOR

ARTICLE 19

Association Justice and Environment, z.s.

Bruno Manser Fonds

CCFD – Terre Solidaire

CEE Bankwatch Network

Centre for Free Expression

Citizens Network Watchdog Poland

Civil Liberties Union for Europe Civil Rights Defenders

Civil Society Europe

Clean Air Action Group (Hungary)

Committee to Protect Journalists

Common Weal

Consumer Association the Quality of Life (EKPIZO)

Corporate Europe Observatory

Defend Democracy

European Digital Rights (EDRI)

Electronic Frontier Foundation

Environmental Partnership Association

ePa?stwo Foundation

Environmental Paper Network International (EPN)

Estonian Forest Aid / Eesti Metsa Abiks ETC Group

Eurocadres / Council of European Professional and Managerial Staff

European Center for Not-for-Profit Law

European Centre for Press and Media Freedom

European Civic Forum

European Coalition for Corporate Justice

European Coordination Via Campesina

European Environmental Bureau (EEB)

European Federation of Journalists

European Federation of Public Service Unions (EPSU)

European Trade Union Confederation (ETUC)

Fern

Fitug

Forest Initiatives and Communities

Forum Ökologie & Papier

FOUR PAWS International

Free Press Unlimited

Friends of the Earth Europe

Friends of the Earth Nuclear Network

Friends of the Siberian Forests

Fundacja Otwarty Plan

Fundacja Strefa Zieleni

Global Justice Ecology Project

GM Watch

Gong

Government Accountability Project

Green Light Foundation

Greenpeace EU Unit

Homo Digitalis

IFEX

Index on Censorship

Institute for Sustainable Development

Institute of Water Policy

International Corporate Accountability Roundtable (ICAR)

International Press Institute (IPI)

Iraqi Journalists Right Defence Association

JEF Europe

Jordens Vänner

Journalismfund.eu

Justice Pesticides

Legal Human Academy

Maison des Lanceurs d'Alerte

Mighty Earth

Milieudefensie / Friends of the Earth Netherlands

MultiWatch NGO

Neuer Weg

NGO Shipbreaking Platform

Nuclear Consulting Group

Nuclear Transparency Watch

OGM dangers

On ne se taira pas (We will not remain silent)

Organized Crime and Corruption Reporting Project (OCCRP)

Osservatorio Balcani e Caucaso Transeuropa

PEN International

Polish Ecological Club Mazovian Branch

Polish Ecological Club Pomeranian Branch

Polish Institute for Human Rights and Business Protection International

RECLAIM

Reporters Without Borders

Rettet den Regenwald e.V.

Salva la Selva

Sciences Citoyennes

Sherpa

Sinergia Animal

Society for Threatened Peoples Switzerland

SOLIDAR

SOMO

Stowarzyszenie Ekologiczno-Kulturalne Wspólna Ziemia / Common Earth

SumOfUs

The Daphne Caruana Galizia Foundation

The Ethicos Group

The Good Lobby

The Signals Network

Transnational Institute

Transparency International EU

Umweltinstitut München e.V.

Vouliwatch

Vrijschrift vzw Climaxi

Chceme zdravú krajinu / We want a healthy country

WeMove Europe

Whistleblower Network Germany

Whistleblowing International Network (WIN)

WildLeaks / Earth League International

Women Engage for a Common Future (WECF)

XNet

Zielone Wiadomości

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