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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a 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") - Letter sent to the European Parliament

At its meeting on 18 September 2023, the Permanent Representatives Committee (Part 2)

- a) confirmed the agreement on the compromise text of the above-mentioned draft Directive, as it was reached between the negotiating parties on 29 November 2023 and as it is contained in 16344/23; and
- b) authorised the Presidency to address the habitual offer letter to the European Parliament.

The letter as it was sent to the European Parliament is set out in the Annex.

This information is provided in accordance with point 1 h) of note 9493/20 on 'Strengthening legislative transparency'.



Council of the
European Union

SGS 23 / 005611

Brussels, 20/12/2023

Mr Adrián VÁZQUEZ LÁZARA
Chair of the Committee on Legal Affairs
European Parliament
Rue Wiertz 60
B-1047 BRUSSELS

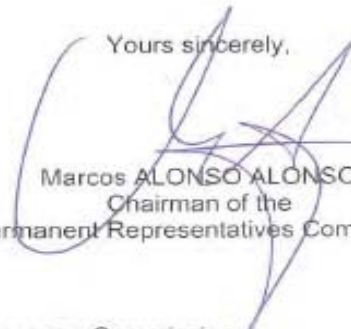
Subject: Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation")

Dear Mr Vázquez Lázara,

Following the informal negotiations on this proposal between the representatives of the three institutions, on 18 December 2023 the Permanent Representatives Committee agreed with the final compromise text.

I am therefore now in a position to inform you that, should the European Parliament adopt its position at first reading, in accordance with Article 294(3) TFEU, in the exact form of the text set out in the Annex to this letter (subject to revision by the lawyer-linguists of the two institutions), the Council, in accordance with Article 294(4) TFEU, will approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the position of the European Parliament.

On behalf of the Council, I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

Marcos ALONSO ALONSO
Chairman of the
Permanent Representatives Committee

Copy: Ms Věra JOUROVÁ, Vice President of the European Commission
Mr Tiemo WÖLKEN, European Parliament rapporteur

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on protecting persons who engage in public participation from manifestly unfounded *claims*
or abusive court proceedings (“Strategic lawsuits against public participation”)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2)(f) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (-1) *The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which the free movement of persons is ensured. To establish such an area, the Union is to adopt, among others, measures relating to judicial cooperation in civil matters having cross-border implications needed for the elimination of obstacles to the proper functioning of civil proceedings. That purpose should be pursued if necessary by promoting the compatibility of the rules on civil procedure that are applicable in the Member States.*
- (1) Article 2 of the Treaty on European Union states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
- (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), **the** 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)** and to an effective remedy and to a fair trial (Article 47).
- (3) The right to freedom of expression and information as ~~set forth~~ **established** 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. Article 11 of the Charter should be given the meaning and scope of ~~the correspondent~~ **corresponding** Article 10 of the European Convention on Human Rights (“ECHR”) on the right to freedom of expression as interpreted by the European Court of Human Rights (“ECtHR”).

- (3b) *In its resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the Union, the European Parliament called on the Commission to propose a package of both soft and hard law to address the increasing number of strategic lawsuits against public participation or ‘SLAPPs’ concerning journalists, NGOs, academics and civil society in the Union. Parliament expressed the need for legislative measures in the areas of civil and criminal procedural law, such as an early dismissal mechanism for abusive civil lawsuits, the right to the full award of costs incurred by the defendant, and the right to compensation for damage. The resolution of 11 November 2021 also included a call for adequate training for judges and legal practitioners on SLAPPs, a specific fund to provide financial support for the victims of SLAPPs and a public register of court decisions on SLAPP cases. In addition, Parliament called for the revision of Regulation (EU) No 1215/2012 of the European Parliament and of the Council¹ (‘Brussels I Regulation’) and of Regulation (EC) No 864/2007 of the European Parliament and of the Council² (‘Rome II Regulation’) in order to prevent ‘libel tourism’ or ‘forum shopping’.*
- (4) *The purpose of this Directive is to provide ~~eliminate~~ obstacles with regard to the proper functioning of civil proceedings, while providing protection for natural and legal persons who engage in public participation on matters of public interest, in particular including journalists, publishers, media organisations, whistleblowers and human rights defenders, against court proceedings, which areas well as civil society organisations, NGOs, trade unions, artists, researchers and academics, against court proceedings initiated against them to deter them from public participation (commonly referred to as “strategic lawsuits against public participation” or ‘SLAPPs’).*

¹ *Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p.1).*

² *Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, p. 40).*

- (4a) *The right to freedom of expression is a fundamental right that is to be exercised with a sense of duty and responsibility, taking into account people's fundamental right to obtain impartial information, as well as the respect for the fundamental right to protect one's reputation, protection of personal data and privacy. In cases of a conflict between these rights, all parties are to have access to courts with due respect to the fair trial principle. To this end, the rules in this Directive should leave the court or tribunal seised with the matter the discretion in order to consider whether the application of the relevant safeguards is appropriate in a particular case. For example, if through the act of public participation disinformation is disseminated or allegations made by the defendant are fabricated and their purpose is to damage the claimant's reputation, public participation is not conducted in good faith.*
- (5) Journalists play an important role in facilitating public debate and in the imparting and reception of information, opinions and ideas. *They should be able to conduct their activities effectively and without fear in order to ensure that citizens have access to a plurality of views in European democracies. Independent, professional and responsible journalism, as well as access to pluralistic information, are key pillars of democracy.* It is essential that ~~they~~ *journalists* 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,~~ *in accordance with the ethics of journalism, and are afforded protection when acting in good faith.*
- (5a) *This Directive does not provide a definition of a journalist, since the aim is to protect any natural and legal person on account of their engagement in public participation. However, it should be underlined that journalism is a function shared by a wide range of actors, including reporters, analysts, columnists and bloggers, as well as others who engage in forms of self-publication in print, on the internet or elsewhere.*

- (6) Investigative journalists **and media organisations** in particular play a key role in **uncovering and** combating organised crime, **abuse of power**, corruption, **fundamental rights violations** and extremism. Their work carries particularly high risks and they are experiencing a growing number of attacks, **killings, threats, intimidation** and harassment. A robust system of safeguards **and protection is required**~~is needed~~ to enable ~~them~~**investigative journalists** to fulfil their crucial role as watchdogs on matters of legitimate public interest, **without fear of punishment for searching for the truth and informing the public.**
- (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 and make their voice heard on policy matters and in decision-making processes without fear of intimidation. Humans~~**should be able to participate actively in public life and promote accountability without fear of intimidation. They are individuals, groups and organisations in civil society that promote and protect universally recognised human rights and fundamental freedoms. Considering the Union's environmental and climate policies, attention should also be given to environmental** rights defenders ~~refer to individuals or organisations engaged in defending fundamental~~**as they play an important role in European democracies. As such, human rights defenders are committed to promoting and safeguarding civil, political, economic, social, cultural, and a variety of other rights, such as environmental and, climate rights, women's rights, and LGBTIQ rights, the rights of the people with a minority racial or ethnic background, labour rights or religious freedoms. Other participants in public debate, such as academics and researchers, also deserve adequate protection. and to fighting against direct or indirect discrimination as set out in Article 21 of the Charter.**

- (7a) *Other important participants in public debate, such as academics, researchers or artists, also deserve adequate protection, since they may also be targeted by SLAPPs. In a democratic society, they should be able to research, teach, learn, perform and communicate without fear of reprisal. Academics and researchers contribute fundamentally to public discourse and dissemination of knowledge, as well as ensure that the democratic debate can take place on an informed basis and counter disinformation.*
- (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 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.
- (9) To foster this environment, it is important to protect ~~journalists and human rights defenders~~ *natural and legal persons* from court proceedings against public participation. Such court proceedings are not initiated for the purpose of access to justice, but to silence public debate *and prevent investigation of and reporting on breaches of Union and national law*, typically using harassment and intimidation.

- (10) SLAPPs are typically initiated by powerful entities, for example individuals, lobby groups, corporations, *politicians*, and state organs *in an attempt to silence public debate*. They often involve an imbalance of power between the parties, with the claimant having a more powerful financial or political position than the defendant. Although not being an indispensable component of such cases, where present, an imbalance of power significantly increases the harmful effects as well as the chilling effects of court proceedings against public participation. *When present, the misuse of economic advantage or political influence by the claimant against the defendant, together with the lack of legal merit, gives rise to particular concern if the abusive lawsuits are funded directly or indirectly from state budgets and are combined with other indirect and direct state measures against independent media organisations, independent journalism and civil society.*
- (11) Court proceedings against public participation may have an adverse impact on the credibility and reputation of ~~journalists and human rights defenders and~~ *natural and legal persons that engage in public participation and may* exhaust their financial and other resources. Because of such proceedings, the publication of information on a matter of public interest may be delayed or *avoided* altogether ~~avoided~~. The length of procedures and the financial pressure may have a chilling effect on ~~journalists and human rights defenders~~ *natural and legal persons that engage in public participation*. The existence of such practices may therefore have a deterrent effect on their work by contributing to self-censorship in anticipation of possible future court proceedings, which leads to the impoverishment of public debate to the detriment of society as a whole.

- (12) Those targeted by court proceedings against public participation may face multiple cases simultaneously, sometimes initiated in several jurisdictions. ***This Directive applies only to matters of a civil or commercial nature having cross-border implications although practices aimed to prevent, restrict or penalize public participation can also involve administrative or criminal cases or a combination of different types of proceedings.*** Proceedings initiated in the jurisdiction of one Member State against a person ~~resident~~**domiciled** in another Member State are usually more complex and costly for the defendant. Claimants in court proceedings against public participation may also use procedural tools to ~~drive up~~**increase** the length and cost of the litigation, ~~and bring cases~~ **and to initiate proceedings** in a jurisdiction **that** they perceive to be favourable ~~for~~**to** their case, ~~rather than to the court~~**instead of in the jurisdiction** best placed to hear the claim (**forum shopping**). ***The length and variety of procedures, the financial pressure and the threat of penalties, constitute powerful tools to intimidate and silence critical voices.*** Such practices also place unnecessary and harmful burdens on national court **systems and lead to misuse of their resources, thus constituting an abuse of judicial** systems.
- (13) The safeguards provided in this Directive should apply to any natural or legal person on account of their **direct or indirect** engagement in public participation. They should also protect natural or legal persons who, either on a professional or on a personal basis, support, assist or provide goods or services to another person for purposes directly linked to public participation on a matter of public interest. ~~This involves for example, such as~~ **lawyers, family members**, internet providers, publishing houses or print shops, which face or are threatened with court proceedings for **assisting**, providing **support or** services to ~~the person~~**persons** targeted ~~with~~**by** court proceedings.

- (14) This Directive should apply to any type of legal claim or action of a civil or commercial nature with cross-border implications *entertained in civil proceedings* whatever the nature of the court or tribunal. This includes *procedures for interim and precautionary measures, counteractions or other particular types of remedies available under other instruments*. *Where civil claims are brought in criminal proceedings, this Directive should apply where the consideration of these claims is fully governed by civil procedural law. However, it should not apply where the consideration of these claims is governed fully or partially by criminal procedural law* ~~It also includes interim and precautionary measures, counteractions or other particular type of remedies available under other instruments.~~
- (15) The Directive ~~does~~*should* not apply to claims arising out of liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*)~~acta iure imperii~~) and claims against officials who act on behalf of the state and liability for acts of public authorities, including liability of publicly appointed office-holders, *unless national law provides for it. In line with established case law of the Court of Justice of the European Union, court proceedings might still fall within the scope of ‘civil and commercial matters’ as referred to in this Directive where a State or a public body is a party, if the acts or omissions do not occur in the exercise of State authority. This Directive should not apply to criminal matters or arbitration.*
- (15a) *This Directive lays down minimum rules, thus enabling the Member States to adopt or maintain provisions that are more favourable to persons engaging in public participation, including national provisions that establish more effective procedural safeguards, such as a liability regime preserving and protecting the right to freedom of expression and information. The implementation of this Directive should not serve to justify any regression in relation to the level of protection that already exists in each Member State.*

- (16) Public participation should mean any statement, **activity or preparatory, supporting or assisting action directly linked thereto**, or activity by a natural or legal person expressed or carried out in **the** exercise of ~~the right to~~ **fundamental rights such as the** freedom of expression and information, **freedom of the arts and sciences, or freedom of assembly and association** on a matter of **current or future** public interest, ~~such as~~ **including** the creation, exhibition, advertisement, **marketing activities** or other promotion of journalistic, political, scientific, academic, artistic, commentary or satirical communications, publications or works, and any preparatory activities directly linked thereto. **Future public interest refers to the fact that a matter might not yet be of public interest, but could become so, once the public becomes aware of it, for example by means of a publication. Public participation** It can also include activities related to the exercise of **academic and artistic freedom**, the right to freedom of association and peaceful assembly, such as the organisation of or participation ~~to~~ **in** 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,~~ **claims before courts or** administrative and judicial ~~claims~~ **bodies** and participation in public hearings. 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 **by SLAPP defendants** to stifle public participation. **Such activities should directly concern a specific act of public participation or be based on a contractual link between the actual target of SLAPP and the person providing the preparatory, supporting or assisting activity. Bringing claims not against a journalist or a human rights defender but against the internet platform on which they publish their work or against the company that prints a text or a shop that sells the text can be an effective way of silencing public participation, as without such services opinions cannot be published and thus cannot influence public debate.** 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.

- (17) ~~Public participation should not normally cover commercial advertisement and marketing activity, which are typically not made in the exercise of freedom of expression and information.~~
- (18) The notion of a matter of public interest should include *matters relevant to the enjoyment of fundamental rights. It comprises such issues as gender equality, protection from gender-based violence and non-discrimination, protection of the rule of law, media freedom and pluralism. It should include* also quality, safety or other relevant aspects of goods, products or services where such matters are relevant to public health, safety, the environment, climate, *consumer and labour* ~~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~~*where* the matter contains an element of public interest, for instance ~~concerning~~*where it concerns* a product or service which fails to comply with environmental or safety standards.
- (19) Activities of a ~~person or entity in the~~*natural or legal person who is a* public eye ~~or of public interest are also~~*figure should also be considered as* matters of public interest ~~to which,~~ *since* the public may legitimately take an interest in *them*. However, there is no legitimate interest involved where the sole purpose of a statement or activity concerning such a person or entity is to satisfy the curiosity of a particular audience regarding the details of a person's private life.
- (19a) *Matters under consideration by a legislative, executive or judicial body or any other official proceedings can be examples of matters of public interest. Concrete examples of such matters could be legislation concerning environmental standards or product safety, an environmental license for a polluting factory or mine or court proceedings with legal significance beyond the individual case, for instance a case about equality, discrimination in the workplace, environmental crime or money laundering.*

- (19b) *Allegations of corruption, fraud, embezzlement, money laundering, extortion, coercion, sexual harassment and gender-based violence, or other forms of intimidation and criminality, including financial criminality and environmental crime, qualify as matters of public interest; where the wrongdoing in question is a matter of public interest it should not be relevant whether it is categorised as a criminal or administrative offence under national law. Activities aimed to protect the values enshrined in Article 2 TEU, the principle of non-interference in democratic processes, and providing or facilitating public access to information with a view to fighting disinformation, including the protection of democratic processes against undue interference, also qualify as matters of public interest.*
- (20) *Abusive court proceedings typically involve litigation tactics **deployed by the claimant** and used in bad faith ~~such as~~ **including but not limited to the choice of jurisdiction, relying on one or more fully or partially unfounded claims, making excessive claims, the use of delaying strategies or discontinuing cases at a later stage of the proceedings, causing initiating multiple proceedings on similar matters, incurring** disproportionate costs ~~to~~ **for** the defendant in the proceedings. *The past conduct of the claimant and, in particular, any history of legal intimidation should also be considered when determining whether the court proceedings are abusive in nature. Those litigation or forum shopping.* These tactics, *which are often combined with various forms of intimidation, harassment or threats before or during the proceedings,* are used by the claimant for **purposes** other purposes than gaining access to justice. ~~Such tactics are often, although not always, combined with various forms of intimidation, harassment or threats~~ **or genuinely exercising a right and aim to achieve a chilling effect on public participation in the matter at stake.***

- (20a) *Claims made in abusive court proceedings can be either fully or partially unfounded. This means that a claim does not necessarily have to be completely unfounded for the proceedings to be considered abusive. For example, even a minor violation of personality rights that could give rise to a modest claim for compensation under the applicable law can still be abusive, if a manifestly excessive amount or remedy is claimed. On the other hand, if the claimant in court proceedings pursues claims that are founded, such proceedings should not be regarded as abusive for the purposes of this Directive.*
- (21) A cross-border dimension of SLAPPs adds to the complexity and challenges faced by defendants, as they need to deal with proceedings in other jurisdictions, sometimes in multiple jurisdictions at the same time. This, in turn, results in additional costs and burdens with even more adverse consequences. *A matter should be considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised and all other elements relevant to the situation are located in that Member State. It is for the court to determine the elements relevant to the situation depending on the particular circumstances of each case, also taking into account, as appropriate, the specific act of public participation or the specific elements indicating a possible abuse, in particular where multiple proceedings are initiated in more than one jurisdiction. This determination by the court should be carried out irrespective of the means of communication used.*

(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. That includes for instance public participation in events organised by Union institutions, such as appearances in public hearings, or statements or activities on matters that are of specific relevance to more than one Member State, such as cross border pollution 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.~~

(23e) *Member States should make available information on available procedural safeguards, remedies and existing support measures in one single place in a so-called “one-stop shop” in order to provide easy access to dedicated information free of charge to those targeted with SLAPPs to help them find all relevant information. It is typical for SLAPPs that the targets suffer from severe financial repercussions and psychological and reputational harm because of abusive court proceedings initiated against them. Causing such harm is one of the aims of the SLAPP claimants when they initiate abusive court proceedings. Therefore, the information provided should include existing support mechanisms, for example information on relevant organisations and associations which provide legal or financial assistance and psychological support to targets of SLAPPs. This Directive does not define the form of the one-stop shop.*

- (23) Defendants should be able to apply for the following procedural safeguards: a ~~request for a~~ security to cover ~~procedural~~ *the costs of the proceedings, or the, or procedural costs and damages, a request for an* *of the proceedings and, where applicable, damages*, early dismissal of manifestly unfounded court proceedings ~~claims~~, a request for remedies against abusive court proceedings (award of costs, ~~compensation of damages and penalties and penalties or other equally effective appropriate measures~~), or *some or all of them. Such procedural safeguards should be applied in line with the right to an effective remedy and to a fair trial, as set out in Article 47 of the Charter, leaving the court discretion in individual cases to appropriately examine the matter at hand and thereby allowing speedy dismissal of manifestly unfounded claims without restricting the effective access to justice. To ensure that applications for security and early dismissal are treated in an accelerated manner, Member States may set time limits for the holding of hearings or for the court to take a decision. They may as well adopt schemes akin to procedures in relation to provisional measures at the same time.*
- (23a) *In order to conclude the proceedings as swiftly as possible, Member States should, in coherence with their national procedural law, make efforts to ensure that where the defendant has applied for remedies under Chapter IV of this Directive, the decision is also taken in an accelerated manner, including by making use of the already existing procedures under national law for accelerated treatment.*
- (23b) *Member States should ensure that all the procedural safeguards provided in this Directive are available to natural or legal persons against whom court proceedings have been brought on account of their engagement in public participation and that the exercise of these safeguards is not unduly arduous. It is for national law to lay down or maintain the specific rules of procedure, form and methods on how the court or tribunal seised on the matter should deal with applications for procedural safeguards. For instance, Member States could apply existing civil procedural rules on the handling of evidence to assess whether the conditions for the application of the procedural safeguards are met or could establish specific rules for this purpose.*

- (24) In some abusive court proceedings against public participation, claimants deliberately withdraw or amend claims or pleadings ***in order*** to avoid awarding costs to the successful party. This legal strategy ~~may deprive the court or tribunal of the power to acknowledge the abusiveness~~***could, in some Member States, leave the defendant with no chance to be reimbursed of the costs*** of the court proceeding, ~~leaving the defendant with no chance to be reimbursed of procedural costs. Such withdrawals or amendments~~***proceedings. Such withdrawals or amendments, if provided for by national law, and with respect for the parties' power to dispose over the proceedings,*** should therefore not affect the possibility for the courts ~~seised to impose~~***defendant to apply for*** remedies against abusive court proceedings, ***in accordance with national law. This is without prejudice to the possibility for Member States to provide that procedural safeguards can be taken ex officio.***
- (25) ~~If the main claim is dismissed later on in the ordinary proceedings, the defendant may still benefit of other remedies against abusive court proceedings such as award of costs and compensation of damages.~~

(25a) *To provide a more effective level of protection, associations, organisations, trade unions and other entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation, should be able to support the defendant in court proceedings brought in relation to public participation, with the defendant's approval. This support should ensure that the specific expertise of such entities can be brought to bear in such proceedings contributing to the determination of the court whether a case is abusive or a claim is manifestly unfounded. It could, for example, take the form of providing information relevant to the case, intervening in favour of the defendant in the court proceedings or any other form as provided for in national law. The conditions under which non-governmental organisations could support the defendant and the procedural requirements for such support, such as time limits where appropriate, should be governed by national law. This should be without prejudice to existing rights of representation and intervention as guaranteed by other Union or national rules. Member States that do not have criteria for legitimate interest may accept that entities in general can support the defendant in accordance with the Directive.*

- (26) To provide the defendant with an additional safeguard, there should be ~~at~~**the** possibility to grant him or her a security to cover ~~procedural~~**the estimated** 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~~**of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, the estimated damages. However, it is necessary to strike a balance between that measure and the claimant's right of access to justice. The court or tribunal seised may consider it appropriate for the claimant to provide a security if there are elements that indicate that the** proceedings are ~~low-~~**abusive or if there is the risk of the defendant not being reimbursed or with regard to the economic situation of the parties or other such criteria laid down in national law. A** security does not entail a judgement on the merits but serves as a precautionary measure ~~ensuring~~**to ensure** the effects of a final decision finding an abuse of procedure **and which covers the costs or, if provided for in national law, the costs and potential damage caused to the defendant, particularly where there is a risk of irreparable harm.** 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. **Where national law so provides, it should be possible to grant security at any stage of the court proceedings.**

- (26a) *The decision that grants early dismissal should be a decision on the merits, after appropriate examination. Member States should adopt new rules or apply existing rules under national law so that the court or tribunal can decide to dismiss manifestly unfounded cases as soon as it has received the necessary information in order to substantiate the decision. Such a dismissal should take place at the earliest possible stage in the proceedings but that moment could occur at any time during the proceedings depending on when the court has received such information, in accordance with national law. The possibility to grant an early dismissal does not preclude the application of national rules which enable national courts or tribunals to assess admissibility of an action even before the proceedings are initiated.*
- (26b) *Where the defendant has applied for the dismissal of the claim as manifestly unfounded, the court or tribunal should deal with that application in an accelerated manner in accordance with national law to expedite the assessment of whether the claim is manifestly unfounded, taking into account the specific circumstances of the case.*
- (27) ~~A stay of the proceedings, when an application for early dismissal has been filed, ensures that procedural activity is suspended, hence reducing the procedural costs of the defendant.~~
- (28) ~~To avoid any impact on the access to an effective remedy, the stay should be temporary and kept until a final decision on the application is taken. A final decision means a decision that is no longer subject to judicial review.~~

- (29) ~~To ensure high expediency in the accelerated procedure on an application for early dismissal, Member States may set time limits for the holding of hearings or for the court to take a decision. They may as well adopt schemes akin to procedures in relation to provisional measures. Member States should make efforts to ensure that when the defendant has applied for other procedural safeguards, the decision is also taken in an expeditious manner. For expeditious treatment, Member States could take into account, amongst others, whether the claimant has initiated multiple or concerted proceedings in similar matters and the existence of attempts to intimidate, harass or threat the defendant.~~
- (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~~*In line with general principles of civil procedure a plaintiff pursuing a claim against a natural or legal person engaging in public participation bears the burden of proof that this* ~~claim is not manifestly unfounded. This does not represent a limitation of access to justice, taking into account that~~*well-founded. Where the defendant has applied for early dismissal, in order to avoid an early dismissal* ~~the claimant carries the burden of proof in relation to that~~*should have to substantiate the* ~~claim in the main proceedings and only needs to meet the much lower threshold of showing~~*at least to such an extent that it enables the court to conclude that* ~~the claim is not manifestly unfounded in order to avoid an early dismissal.~~
- (30a) *A decision granting early dismissal should be subject to appeal. A decision refusing early dismissal could also be subject to appeal in accordance with national law.*

- (31) *Where the court has found the proceedings to be abusive*, costs should include all *types of* costs of the proceedings *available under national law*, 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~~ *Where national law does not guarantee the award in full of the costs of legal representation beyond* statutory fee tables, *Member States* should ~~not be considered as excessive per se. Full compensation of damages ensure that the claimant fully bears such costs by other means available under national law.~~ *However, the full costs of legal representation* should ~~include both material and immaterial damages, such as physical and psychological harm~~ *not be awarded where such costs are excessive, for example where disproportionate fees have been agreed. The court should render the decisions on costs in accordance with national law.*
- (32) The main objective of giving courts or tribunals the possibility to impose penalties *or other equally effective appropriate measures* is to deter potential claimants from initiating abusive court proceedings against public participation. ~~Such penalties should be proportionate to the elements of abuse identified. When establishing amounts for~~ *Other appropriate measures, including the payment of compensation for damages or the publication of the court decision, where provided for in national law, should be as effective as penalties. Where the court has found the proceedings to be abusive, such penalties or other equally effective appropriate measures should be determined on a case by case basis, should be proportionate to the nature and elements indicating an abuse identified and,* courts should take into account the potential for a harmful or chilling effect of the proceedings on public participation, ~~including as related to the nature of the claim, whether~~ *or the economic situation of the claimant who has exploited the imbalance of power. It would be for the Member States to decide how any monetary amounts should be paid* ~~has initiated multiple or concerted proceedings in similar matters and the existence of attempts to intimidate, harass or threat the defendant.~~

- (32a) *The aim of the publication of relevant court decisions is to raise awareness on SLAPPs and to provide a source of information on SLAPPs to courts, legal professionals and the general public. The publication should respect Union and national rules on the protection of personal data and could be ensured via appropriate channels such as existing judicial data bases or the e-Justice Portal. In order to limit administrative burden, Member States should be required at least to publish judgments of national courts of appeal or of the highest instance*
- (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 EU journalists, human rights defenders and ~~others~~ *persons engaging in public participation*. Court proceedings in third-countries are more complex and costly for the targets. To protect democracy and *the right to* 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 manifestly unfounded and abusive court proceedings in third countries. *Member States may choose whether to refuse the recognition and enforcement of a third-country judgment as manifestly contrary to public policy (ordre public) or on the basis of a separate refusal ground.*
- (33a) *This Directive should not affect the application of bilateral and multilateral conventions and agreements between a third State and the Union or a Member State concluded before the date of entry into force of this Directive including the 2007 Lugano Convention, in line with Article 351 of the Treaty on the Functioning of the European Union.*

- (33b) *The rules on jurisdiction and applicable law in cases set out in Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations may be relevant in SLAPP-cases. Therefore, any future review of these instruments should assess also the SLAPP-specific aspects of the rules on jurisdiction and applicable law.*
- (34) This Directive creates a new special ground of jurisdiction in order to ensure that targets of SLAPPs domiciled in the European Union have an efficient remedy available in the Union against abusive court proceedings brought in a court or tribunal of a third country *by a claimant domiciled outside the Union. It applies irrespective of a decision being rendered or being final, as targets of SLAPPs can suffer damages and incur costs since the start of the court proceedings and possibly without any decision being rendered, such as in the case of a withdrawal. However, Member States may decide to limit the exercise of the jurisdiction while proceedings are still pending in the third country, in accordance with national law, for example by providing for a stay of the proceedings in the Member State.* This special ground of jurisdiction allows the targets domiciled in the European Union to seek, in the courts or tribunals of their domicile, ~~for~~ compensation of damages and costs incurred *or reasonably expected to be incurred* in connection with the proceedings before the court or tribunal of the third country. ~~This right applies irrespective of the domicile of the~~ *It is aimed to act as a deterrent against abusive court proceedings brought in third countries against persons domiciled in the European Union and can be enforced, for example, where a claimant in the proceedings domiciled outside the Union has assets in the third country.* ~~European Union. This provision does not deal with applicable law nor with substantive law on damages as such.~~

- (34e) *The type of data to be collected pursuant to this Directive, where available, focuses on a limited number of key elements, such as the number of abusive court proceedings against public participation classified by the types of defendants and claimants and the types of claims which are used to initiate such court proceedings. This data is needed to monitor the existence and growth of SLAPPs in the European Union, providing authorities and other relevant stakeholders with information to quantify and better understand SLAPPs and help them to provide the necessary support to targets. The availability of data would be facilitated by digitalisation of justice.*
- (35) This Directive should be without prejudice to the protection ~~that~~**provided by** other instruments of Union law ~~or national law provide to~~**establishing more favourable rules for** natural and legal persons that engage in public participation. In particular, ~~it~~**this Directive** does not *intend to reduce or restrict rights such as the right to freedom of expression and information, nor does it intend to* detract in any way from the protection offered by Directive 2019/1937 on the protection of persons who report breaches of Union law³¹, as implemented in national law. As regards situations ~~falling~~**that fall** within the scope of this Directive and of Directive 2019/1937, the protection offered by both acts should ~~therefore~~ apply.

³ OJ L 305, 26.11.2019, p. 17–56.

- (36) ~~This Directive is complementary to~~ The Commission recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”)- ~~This recommendation~~ is addressed to Member States and ~~it~~ provides a comprehensive toolbox of measures including training, awareness-raising, support ~~to~~**for** targets of abusive court proceedings and data collection, **and the** reporting and monitoring of court proceedings against public participation. ***When the Commission prepares a report on the application of this Directive, taking into account also the national context of each Member State, including the implementation of the Commission recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), it should prepare a separate summary of the report in an easily accessible format. This summary should contain key information on the use of the safeguards provided for in this Directive in the Member States. The Commission should publish both the report and the summary via appropriate channels, including the e-Justice Portal.***
- (36a) ***This Directive complies with the protection of the fundamental rights and observes the principles recognised by the Charter and the fundamental rights constituting general principles of Union law. Accordingly, this Directive should be interpreted and implemented in accordance with those fundamental rights, including the right to freedom of expression and of information, as well as the rights to an effective remedy, to a fair trial and to access to justice. When implementing this Directive, all public authorities involved should achieve, in situations where the relevant fundamental rights conflict, a fair balance between the rights concerned, in accordance with the principle of proportionality.***

- (37) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (38) ~~In accordance with Articles 1, 2 and 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, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application]~~ OR
- (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 ~~---~~**6 July 2022,**~~]~~ its wish to take part in the adoption and application of this Directive.]
- (39a) *Since the objectives of this Directive cannot be sufficiently achieved by the Member States because of the differences between national procedural laws, but can rather, by reason of the fact that this Directive sets common minimum standards for national procedural safeguards in cross-border matters of a civil and commercial nature, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.*

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

Subject matter

This Directive provides safeguards against manifestly unfounded *claims* or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons, ~~in particular journalists and human rights defenders~~, on account of their engagement in public participation.

Article 2

Scope

This Directive shall apply to matters of a civil or commercial nature with cross-border implications *entertained in civil proceedings, including interim and precautionary measures and counteractions, entertained in civil proceedings*, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the state for acts and omissions in the exercise of state authority (*acta iure imperii*~~acta iure imperii~~). *This Directive shall not apply to criminal matters or arbitration and shall be without prejudice to criminal procedural law.*

Article 2a

Minimum requirements

1. *Member States may introduce or maintain provisions that are more favourable to protect persons engaging in public participation against manifestly unfounded or abusive court proceedings in civil matters, including national provisions establishing more effective procedural safeguards relating to the right to freedom of expression and information.*
2. *The implementation of this Directive shall in no circumstances constitute grounds for a reduction in the level of safeguards already afforded by Member States in the matters covered by this Directive.*

Article 3

Definitions

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

1. ‘public participation’ means any statement or activity by a natural or legal person expressed or carried out in the exercise of the right to freedom of expression and information, ***freedom of the arts and sciences, or freedom of assembly and association*** ~~on a matter of public interest~~, and preparatory, supporting or assisting action directly linked thereto. ~~This includes complaints, petitions, administrative or judicial claims and participation in public hearings;~~ ***on a matter of public interest.***
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) ***fundamental rights***, public health, safety, the environment, ~~climate or enjoyment of fundamental rights;~~ ***or the climate***

- (b) activities of a ~~person or entity~~ **public figure** in the ~~public eye or of~~ **private or public interest sector**;
- (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, **any other criminal offence or administrative offences in relation to such matters** ~~or criminality~~;
- (e) activities aimed to ~~fight~~ **protect the values enshrined in Article 2 TEU, including the protection of democratic processes against undue interference, in particular by fighting** disinformation;

3. ‘abusive court proceedings against public participation’ mean court proceedings ~~brought in relation to public participation that are fully or partially unfounded and~~ **which are not brought to genuinely assert or exercise a right, but** have as their main purpose ~~to prevent, restrict or penalize~~ **the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims.** Indications of such a purpose can be:

- (a) the disproportionate, excessive or unreasonable nature of the claim or part thereof, **including the excessive dispute value**;
- (b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;

- (c) intimidation, harassment or threats on the part of the claimant or his or her representatives, *before or during the proceedings, as well as similar conduct of the claimant in similar or concurrent cases;*
- (ca) *the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of the cases at a later stage of the proceedings in bad faith.*

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 *and all other elements relevant to the situation are located only in that Member State.*
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:~~ *Domicile shall be determined in accordance with Regulation of the European parliament and Council (EU) No 1215/2012/EU.*
 - ~~(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~~
 - ~~(b) the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State.~~

CHAPTER II

Common rules on procedural safeguards

Article 5

Applications for procedural safeguards

1. Member States shall ensure that ~~when~~**where** court proceedings are brought against natural or legal persons on account of their engagement in public participation, those persons can apply, ***in accordance with national law***, for:
 - (a) security ~~in accordance with~~**as provided for in** Article 8;
 - (b) early dismissal of manifestly unfounded court proceedings ~~in accordance with~~**claims as provided for in** Chapter III;
 - (c) remedies against abusive court proceedings ~~in accordance with~~**as provided for in** 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 may provide that measures on procedural safeguards ~~in accordance with~~**as provided for in** Chapters III and IV can be taken by the court or tribunal seised of the matter ~~ex officio~~**ex officio**.

Article 5a

Accelerated treatment of applications for safeguards

1. *Member States shall ensure that applications in accordance with Article 5(1) (a) and (b) are treated in an accelerated manner in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.*
2. *Member States shall ensure that applications in accordance with Article 5(1)(c) may also be treated in an accelerated manner, where possible, in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.*

Article 6

Subsequent amendment to claim or pleadings

Member States shall ensure that *in court proceedings brought against natural or legal persons on account of their engagement in public participation* any subsequent amendments to the claims or the pleadings made by the claimant ~~in the main proceedings, including the discontinuation of proceedings~~*withdrawal of claims*, do not affect the possibility for the court or tribunal seised of the matter to consider the court proceedings abusive and to impose remedies in accordance with ~~Chapter IV~~*defendant to apply for remedies as provided for in Chapter IV, in accordance with national law. This is without prejudice to Article 5(3).*

Article 7

Third party intervention *Support for the defendant in court proceedings*

Member States shall ~~take the necessary measures to ensure that a court or tribunal seised of court proceedings~~ *brought* against *natural or legal persons on account of their engagement in* public participation may accept that ~~non-governmental~~ *associations, organisations, trade unions and other entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in* safeguarding or promoting the rights of persons engaging in public participation, *may support the defendant, with his or her approval, or provide information in those proceedings in accordance with national law* ~~may take part in those proceedings, either in support of the defendant or to provide information.~~

Article 8

Security

Member States shall ensure that in court proceedings *brought* against *natural or legal persons on account of their engagement in* public participation, the court or tribunal seised ~~has the power to require~~ *may require, without prejudice to the right of access to justice, that* the claimant ~~to provide~~ *provides* security for ~~procedural~~ *the estimated* costs, ~~or for procedural costs and damages, if it considers such security appropriate in view of presence of elements indicating abusive court proceedings of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, damages.~~

CHAPTER III

Early dismissal of manifestly unfounded ~~court proceedings~~*claims*

Article 9

Early dismissal

1. Member States shall ~~empower~~*ensure that* courts and tribunals ~~to adopt an early decision~~*to* ~~may~~ dismiss, in full or in part, court proceedings *after appropriate examination, claims* against public participation as manifestly unfounded *at the earliest possible stage, in accordance with national law.*
2. Member States ~~may 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~~*shall ensure that an application for early dismissal is treated in an accelerated manner in accordance with national law, taking into account the circumstances of the case and the right to an effective remedy and the right to a fair trial.*

Article 10

~~Stay of the main proceedings~~

~~Member States shall ensure that if the defendant applies for early dismissal, the main proceedings are stayed until a final decision on that application is taken.~~

Article 11

Accelerated procedure

~~Member States shall ensure that an application for early dismissal is treated in an accelerated procedure, taking into account the circumstances of the case and the right to an effective remedy and the right to a fair trial.~~

Article 12

Burden of proof and substantiation of claims

1. *The burden of proving that the claim is well founded rests on the claimant who brought the action.*
2. Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to ~~prove that the claim~~ *substantiate the claim in order to enable the court to assess whether it* is not manifestly unfounded.

Article 13

Appeal

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

CHAPTER IV

Remedies against abusive court proceedings

Article 14

Award of costs

1. Member States shall ~~take the necessary measures to~~ ensure that a claimant who has brought abusive court proceedings against public participation can be ordered to bear all ~~the types of~~ costs of the proceedings; *available under national law* including the full costs of legal representation incurred by the defendant, unless such costs are excessive.
- 1a. *Where national law does not guarantee the award in full of the costs of legal representation beyond statutory fee tables, Member States shall ensure that such costs are fully covered, unless they are excessive, by other means available under national law.*

Article 15

Compensation of damages

~~Member States shall take the necessary measures to ensure that a natural or legal person who has suffered harm as a result of an abusive court proceedings against public participation is able to claim and to obtain full compensation for that harm.~~

Article 16

Penalties or other equally effective appropriate measures

Member States shall ~~provide~~**ensure** that courts or tribunals seised of abusive court proceedings against public participation ~~have the possibility to~~**may** impose effective, proportionate and dissuasive penalties ***or other equally effective appropriate measures, including the payment of compensation for damages or the publication of the court decision, where provided for in national law,*** on the party who brought those proceedings.

CHAPTER V

Protection against third-country judgments

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~~ **against** public participation by **a** 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~~ **are** considered manifestly unfounded or abusive if ~~they had been brought before the courts or tribunals~~ **according to the law** of the Member State **wherein which** recognition or enforcement is sought ~~and those courts or tribunals would have applied their own law.~~

Article 18

Jurisdiction for actions ~~against~~ **related to third-country judgments proceedings**

1. Member States shall ensure that, where abusive court proceedings ~~on account of engagement in~~ **against** public participation have been brought **by a claimant domiciled outside the Union** in a court or tribunal of a third country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where he is domiciled, compensation ~~of~~ **for** the damages and the costs incurred in connection with the proceedings before the court or tribunal of ~~the third country, irrespective of the domicile of the claimant in the proceedings in~~ the third country.
2. **Member States may limit the exercise of the jurisdiction while proceedings are still pending in the third country.**

CHAPTER VI

Final provisions

Article 19

Relations with ~~the 2007 Lugano Convention~~ *bilateral and multilateral conventions and agreements*

This Directive shall not affect the application of ~~the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007~~ *bilateral and multilateral conventions and agreements between a third State and the Union or a Member State concluded before the date of entry into force of this Directive.*

Article 19a

Information and transparency

1. *Member States shall ensure that natural or legal persons engaging in public participation referred to in Article 5 have access, as appropriate, to information on available procedural safeguards and remedies and existing support measures such as legal aid and financial and psychological support, where available.*

Information shall include any available information on awareness-raising campaigns, where appropriate in cooperation with relevant civil society organisations and other stakeholders.

Such information shall be provided in one single place in an easily accessible format via an appropriate channel such as an information centre, an existing focal point or an electronic gateway, including e-justice portal.

2. *Member States shall ensure that legal aid in cross-border civil proceedings is provided in accordance with Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.*
3. *Member States shall ensure the publication, in an easily accessible and electronic format, of any final judgment delivered by their national courts of appeal or of the highest instance in relation to proceedings falling within the scope of this Directive. The publication shall be made in accordance with national law.*

Article 19a

Data collection

Member States shall, on an annual basis and where available, submit data on the applications and or decisions referred to in Chapter II, III, IV and V to the Commission, preferably in an aggregated form, on:

- (a) *the number of abusive court proceedings against public participation cases, initiated in the relevant year;*
- (b) *the number of court proceedings, classified by type of defendant and of claimant;*
- (c) *the type of claim issued on the basis of this Directive.*

Article 20

Review

Member States shall provide the Commission with ~~all relevant information~~ **the available data** regarding the application of this Directive, **in particular available data showing how those targeted by court proceedings against public participation have used the safeguards provided for in this Directive, by ... by [5four years from the date of transposition years from the date of transposition]**. On the basis of the information provided, the Commission shall by ... **[five years from the date of transposition [6 years from the date of transposition] and every five years thereafter** at the latest, submit to the European Parliament and the Council a report on the application of this Directive. The report shall provide an assessment of the evolution of abusive court proceedings against public participation and the impact of this Directive in the Member States **while taking account of the national context in each Member State, including the implementation of the Commission Recommendation**. If necessary, the report shall be accompanied by proposals to amend this Directive. **Those Commission reports shall be made public.**

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 ... **[2 two years from the date of entry into force of this Directive years 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.**

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.

Article 22

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*~~Official Journal of the European Union~~.

Article 23

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President