

Ending Gag Lawsuits in Europe

Protecting Democracy and Fundamental Rights

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 large.
- **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 standards. 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 law. 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 SLAPPs.

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 116 organisations

Abalone Alliance Safe Energy Clearinghouse
Access Info Europe
Access Now
ActionAid International
Adéquations
Amigas de la Tierra
Amis de la Terre France
ANTICOR
ARTICLE 19
Association Justice and Environment, z.s.
Bruno Manser Fonds
Terre Solidaire (CCFD)
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
ePaństwo 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
Milieudéfense / 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)
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
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