



Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas  
Irish Human Rights and Equality Commission

Minister O'Callaghan, TD  
Department of Justice, Home Affairs and Migration  
51 St Stephen's Green,  
Dublin 2,  
D02 HK52

20 March 2026

## **Re: General Scheme of the Strategic Lawsuits Against Public Participation Bill**

Dear Minister O'Callaghan

The Commission welcomes publication of the General Scheme of the Strategic Lawsuits Against Public Participation Bill ('the General Scheme') which purports to transpose the EU Anti-SLAPP Directive<sup>1</sup> into Irish law.<sup>2</sup>

The need to combat the use of Strategic Lawsuits Against Public Participation ('SLAPPs') is an important and priority issue for the Commission, particularly in relation to Human Rights Defenders and in the context of the Commission's Rule of Law reporting through the European Network of Human Rights Institutions (ENNHRI) and the European Commission. The Commission's engagement in respect of this matter has included correspondence to the then Minister for Justice in February 2024 in which we recommended that the State take a broad and ambitious approach in preparing a national legislative, regulatory, and policy framework to combat SLAPPs.<sup>3</sup> We also raised the importance of legislation on SLAPPs when we met Commissioner McGrath in 2025, and have engaged with officials from your Department on this issue.

We note that the Anti-SLAPP Directive aims to protect a number of fundamental rights including the right to respect for private and family life, to the protection of personal data, to freedom of expression and information, to freedom of assembly and of association and the right to an effective remedy and to a fair trial.<sup>4</sup> We also note that the Anti-SLAPP Directive is

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<sup>1</sup> [Directive \(EU\) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings \('Strategic lawsuits against public participation'\)](#)

<sup>2</sup> We note that the Defamation (Amendment) Act 2026 purports to give effect to the Anti-SLAPP Directive in so far as it relates to defamation proceedings.

<sup>3</sup> <https://www.ihrec.ie/downloads/Letter-to-the-Minister-of-Justice-on-provisions-relating-to-Strategic-Litigation-Against-Public-Participation-in-the-General-Scheme-of-the-Defamation-Amendment-Bill-2023.pdf>

<sup>4</sup> Recital 3. The right to freedom of expression and information as established in Article 11 of the EU Charter of Fundamental Rights includes the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers - Recital 4.



intended to protect a broad range of persons who may be targeted by abusive court proceedings against public participation and makes clear that it includes a broad definitions of journalists and human rights defenders.<sup>5</sup> The Commission welcomes that the General Scheme, interpreted in line with the Anti-SLAPP Directive, is broad in its personal scope and seems to cover all potential victims of SLAPPs.

Your Department has suggested in correspondence that IHREC could be assigned the role of focal point to provide information to targets of SLAPPs for the purposes of the Directive and the European Commission's 2022 Anti-Slapp Recommendation. The Commission recognises the important role that a focal point can play in providing information on and raising awareness of SLAPPs and agrees that it is the appropriate body to be designated as a focal point in this regard. In order to be effective in carrying out this additional mandate, IHREC will require to be adequately resourced. We trust that you will engage with the Department of Children, Disability and Equality on this matter and highlight the need for additional funding to be provided to IHREC.

In the attached, we set out our recommendations for consideration by you and your Department on specific matters where we consider the General Scheme should be amended in order to ensure compliance with the Anti-SLAPP Directive, and where it would be appropriate to go beyond the minimum requirements of the Directive.

In accordance with our mandate, we will continue to analyse this legislation as it progresses through the legislative process. The team and I are available to meet with you or your officials in order to discuss these issues further.

In accordance with our publication policy this letter may be published on our website.

Yours sincerely,

Deirdre Malone  
Director

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<sup>5</sup> Recitals 9 and 11. Recital 11 states that human rights defenders are committed to promoting and safeguarding civil, political, economic, social, cultural, environmental, climate, women's and LGBTIQ rights and to fighting against direct or indirect discrimination as set out in Article 21 of the Charter. It also provides that considering the Union's environmental and climate policies, attention should also be given to environmental rights defenders as they play an important role in European democracies.



## General Observation

The Commission notes that the indicators of “abusive court proceedings against public participation” set out in article 4(3) of the Directive include that they “frequently [exploit] an imbalance of power between the parties” or include “intimidation, harassment or threats on the part of the claimant or the claimant’s representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases”. In this way, criminal law and the Anti-SLAPP Directive overlap. Exploitation, intimidation, harassment and/or threats can all form components of criminal offences under Irish law.

**The Commission recommends that, in order to adequately protect victims of SLAPPs, such criminal conduct should be prosecuted alongside the protections of the Anti-SLAPP Directive and the General Scheme.**

## Specific Observations

### Head 2 – Definition of proceedings

Article 2 of the Anti-SLAPP Directive sets out its scope as applying “to matters of a civil or commercial nature with cross-border implications brought in civil proceedings, *including procedures for interim and precautionary measures and counteractions*,<sup>6</sup> 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*). This Directive shall not apply to criminal matters or arbitration and shall be without prejudice to criminal procedural law”.

“Proceedings” are defined in Head 2 of the General Scheme as “civil or commercial proceedings, other than those to which Part 4A of the Defamation Act 2009 relates, and includes any cause, action, suit or matter, in any court, other than criminal, revenue, customs or administrative matters or matters relating to the liability of the state for acts and omissions in the exercise of state authority”.

Section 19 of the Defamation (Amendment) Bill inserts a definition of “defamation proceedings” into s. 34A of the Principal Act, as: ‘defamation proceedings’ means— (a) an application under section 33 for an order to prevent the publication of an alleged defamatory statement, (b) a defamation action, or (c) a claim for other relief under this Act in respect of an alleged defamatory statement, whether brought as a claim or a counter-claim ...

Head 2 of the General Scheme defines ‘abusive court proceedings against public participation’ as “proceedings or part thereof ...”. This seems to mean certain grounds or

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<sup>6</sup> Emphasis added.



points of claim in a particular set of proceedings rather than an interlocutory part of the proceedings or counter-claim.

**The Commission recommends that to fully transpose article 2 of the Anti-SLAPP Directive, “proceedings” as defined in the General Scheme, should include “procedures for interim and precautionary measures and counteractions [or ‘counter-claims’, to align with the wording of the Defamation (Amendment) Bill]” to ensure that interlocutory proceedings in the context of both defamation actions or other civil actions are included.**

Defamation proceedings are expressly included under Head 3 (support for defendant), Head 4 (security for costs and damages), Head 6 (burden of proof in applications for early dismissal), Head 11 (enforcement and recognition of third country judgments) and Head 12 (redress for abusive court proceedings against public participation in a third country).

**The Commission recommends that for consistency and legal certainty, the definition of “proceedings” in Head 2 should be amended to provide that ‘proceedings’ means civil or commercial proceedings, other than those to which Part 4A of the Defamation Act 2009 relates, save where expressly stated in the Strategic Lawsuits Against Public Participation Act.**

## Head 2 – Definition of abusive court proceedings

The Anti-SLAPP Directive only applies to matters with cross-border implications as defined in article 5 of the Directive. Member states are permitted to introduce or maintain more favourable standards under article 3 of the Directive. The General Scheme is intended to apply to both domestic and cross border proceedings. Head 2 of the General Scheme defines “abusive court proceedings against public participation” in line with the definition of that concept in article 4(3) of the Directive.

**The Commission recommends that to make clear that the General Scheme applies to both domestic and cross border proceedings, the definition of “abusive court proceedings against public participation” could be amended to clarify that such proceedings include those within the State or in the State and in any other State.**

## Head 5(2) – Manifestly unfounded

“Manifestly unfounded” is not defined in the Directive and so it is left to national law to define this concept. The Directive uses both the terms “abusive court proceedings”, which can relate to an entire claim or part thereof under Article 4(3)(a) of the Directive, and “manifestly unfounded”, which is the threshold for early dismissal under Article 11 and relates only to an entire claim since there can be no dismissal of only part of a claim under the Directive.



Head 5 of the General Scheme sets out the potential elements of a manifestly unfounded claim.

Head 5:

2. In this section ‘manifestly unfounded’ in relation to a claim, includes where:

(a) the indorsement or pleading –

(i) is unnecessary,

(ii) is an abuse of the process of the court, or

(iii) in the case of an interim or interlocutory application, may unreasonably prejudice or delay the fair trial of the action.

(b) the claim –

(i) discloses no reasonable cause of action,

(ii) amounts to an abuse of process of the court,

(iii) is bound to fail, or

(iv) has no reasonable chance of succeeding.

Head 5(2)(a) appears to relate to only part of a claim whereas Head 5(2)(b) relates to a full claim. The definition of ‘manifestly unfounded’ as relating to part of a claim does not adequately transpose the Directive as the purpose of this concept is to serve as the threshold for the early dismissal of an entire claim.

**The Commission recommends that the wording of Head 5(2)(a)(i) to (iii) should be deleted or it should be made clear that these are examples of an “abusive claim” rather than a “manifestly unfounded claim”.**

## Head 6 – Burden of Proof

Article 12 of the Directive, entitled “Burden of proof and substantiation of claims”, contains two distinct provisions, namely the applicable burden of proof and an onus on a claimant to substantiate their claim.<sup>7</sup>

Article 6 of the Directive sets out the general principle that Member States should ensure that natural or legal persons who face SLAPP proceedings can apply for the procedural safeguards of security, early dismissal, and remedies. Article 6 suggests that a defendant need only establish that “*court proceedings*” have been brought against them as a result of their

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<sup>7</sup> Article 12 – 1. The burden of proving that the claim is well founded rests on the claimant who brings the action.  
2. Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to substantiate the claim in order to enable the court to assess whether it is not manifestly unfounded.



engagement in public participation in order to trigger their entitlement to apply for the procedural safeguards. It does not go further in requiring that “*abusive* court proceedings” have been brought against them. Proceedings are only “abusive” or “manifestly unfounded” when they are determined to be so by a court.

However, Head 6 of the General Scheme entitled “Burden of proof in applications for early dismissal” provides that “where early dismissal is sought in proceedings and a court is satisfied that there is a *prima facie* case that the proceedings are **abusive** proceedings against public participation or are otherwise manifestly unfounded, it shall be for the claimant in proceedings to substantiate the claim...” [emphasis added]. It appears that Head 6 of the General Scheme, as currently drafted, places a greater burden on a defendant than that permitted by the Directive. Member States are not permitted to go below the minimum requirements of the Directive. Furthermore, Head 6 does not contain the two requirements set out in article 12 of the Directive.

**The Commission recommends that Head 6 of the General Scheme should be amended to provide that ‘proceedings’ are those brought against natural or legal persons on account of their engagement in public participation, and to remove reference to proceedings being abusive proceedings against public participation.**

**The Commission recommends that, to comply with Article 12 of the Anti-SLAPP Directive, Head 6 should be amended to make clear that the burden of proving that the claim is well founded rests on the claimant who brought the action.**

### Head 12 – Redress for abusive court proceedings against public participation in a third country

Article 17 of the Anti-SLAPP Directive provides that Member States shall ensure that, where abusive court proceedings 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 that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country.

Head 12 of the General Scheme purports to transpose Article 17, however, it refers only to defendants in defamation proceedings:

1. A defendant in defamation proceedings before a court or tribunal of a third country relating to his or her public participation (third-country proceedings), who is domiciled in the State, may make an application for a declaration by the court that the proceedings or part thereof amount to abusive proceedings against public participation, within the meaning of this Bill or [Part 4A of the Defamation



Act 2009], for the purpose of seeking compensation in respect of damages and costs incurred in connection with the third-country proceedings.

It is noted that the explanatory note to the General Scheme states that “it is intended that Head 12 will provide the target of SLAPP proceedings in a third country, who is domiciled in the State, with a cause of action in the State in respect of those proceedings”.

**The Commission recommends that in order to ensure adequate transposition of the minimum requirements of the Anti-SLAPP Directive, Head 12 should be amended to delete the limitation to “defamation proceedings” and replace this with “abusive court proceedings”.**

### Subsequent amendment to claim of pleadings

Article 8 of the Directive is entitled “Subsequent amendment to claim of pleadings” and provides that Member States shall ensure that any amendments to the claims or pleadings made by the claimant in a SLAPP case, including the withdrawal of claims, do not affect the possibility of the defendant to apply for remedies as provided for in the Directive. Article 8 of the Directive does not seem to be included in the General Scheme.

**The Commission recommends that a provision should be included in the General Scheme that adequately transposes article 8 of the Anti-SLAPP Directive.**

### Article 19 Information and transparency

Under Article 19 of the Directive Member States must ensure that persons engaging in public participation have access to information on available procedural safeguards and remedies and existing support measures such as legal aid and financial and psychological support, where available. This 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 the European e-Justice Portal.

Recital 46 to the Directive further explains that the purpose of this ‘one-stop shop’ is to provide easy access to dedicated information free of charge to those targeted with SLAPPs to help them find all relevant information, noting that those targeted suffer severe financial repercussions and psychological and reputational harm. Notably, the Directive does not define the form of that one-stop shop.



The European Commission’s Anti-Slapp Recommendation<sup>8</sup> also sets out that each Member State should establish a Focal Point that gathers and shares information on all organisations that provide guidance and support for targets of manifestly unfounded or abusive court proceedings against public participation.

The General Scheme does not contain any provision relating to the nature or responsibilities of the entity that will comprise the ‘one-stop shop’. Member states are required to transpose EU directives in a manner such as to ensure they are fully effective.<sup>9</sup> A strong argument could be made that the Irish transposition measure should make clear, at the very least, the form the one-stop shop will take in the Irish system. This could be in the form of a power to make regulations to provide for what form it will take.

**The Commission recommends that the General Scheme should include a provision that makes clear, at the very least, the form the one-stop shop under Article 19 will take in the Irish system. This could be in the form of a power to make regulations to provide for what form it will take.**

### Legal Aid

Article 19(2) of the Anti-SLAPP Directive provides that “Member States shall ensure that legal aid in cross-border civil proceedings is provided in accordance with Council Directive 2003/8/EC [to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes]”.<sup>10</sup> It is not clear if the Legal Aid Board has been designated as the competent authority for the purposes of Directive 2003/8/EC, however, it is noted that the Citizens Information website has a webpage “Civil legal aid and cross border disputes” in which it states that the appropriate authority in Ireland to apply to for legal aid in relation to a cross-border dispute is the Legal Aid Board.<sup>11</sup>

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<sup>8</sup> [COMMISSION RECOMMENDATION \(EU\) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings \(‘Strategic lawsuits against public participation’\) at point 25.](#) Note that it appears that the specific requirement of a focal point comes from the EC’s Recommendation whereas the Directive does not prescribe the nature of the body that should provide information to persons engaging in public participation.

<sup>9</sup> C-178/94 *Dillenkofer*

<sup>10</sup> [Council Directive 2003/8/EC](#)

<sup>11</sup> <https://www.citizensinformation.ie/en/justice/legal-aid-and-advice/civil-legal-aid-and-cross-border-disputes/>



**The Commission recommends that in the interest of legal certainty, the Legal Aid Board should officially be designated as the competent authority for providing legal aid in cross-border SLAPP proceedings in the General Scheme or by statutory instrument.**

The Council of Europe Recommendation CM/Rec(2024)2 notably recommends that “where necessary and according to national legislation, Member States should consider providing adequate access to free legal assistance, including in the light of the [SLAPP] indicators” (§ 51). One of these indicators is stated at § 8 of the recommendation to be that “the claimant tries to exploit an imbalance of power, such as their financial advantage or political or societal influence, to put pressure on the defendant”. As such, financial support is a key support in effectively addressing SLAPPs.

**The Commission recommends that consideration should be given to including a provision for legal aid in the General Scheme in respect of domestic proceedings.**

### *Ex officio measures*

Article 6(2) of the Directive provides that Member States “may provide that measures on procedural safeguards as provided for in Chapters III and IV can be taken *ex officio* by the court or tribunal seised of the matter”. This affords Member States a choice of whether to include this provision in their transposing measures. Several Heads in the General Scheme make clear that a court only has jurisdiction to apply its provisions on application by the defendant.<sup>12</sup> It is clear as such that the option of article 6(2) has not been adopted in the General Scheme. If a court could consider whether or not to take measures on procedural safeguards under the General Scheme of its own volition, this would increase the protections available to victims of abusive court proceedings against public participation.

**The Commission recommends that Head 4, Head 5, Head 7, Head 9 and Head 12 of the General Scheme should be amended to provide that the Court may apply the relevant provisions therein *ex officio*.**

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<sup>12</sup> Head 4, Head 5, Head 7, Head 9 and Head 12.