[NL] Bill implementing the EU Anti-SLAPP Directive published

IRIS 2024-10:1/8

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On 7 October 2024, the Dutch Government published an important bill to implement the 2024 EU Directive on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (strategic lawsuits against public participation – SLAPPs), known as the Anti-SLAPP Directive (see IRIS 2024-3/5 and IRIS 2022-5/6). The purpose of the directive is to provide safeguards against SLAPPs, which are manifestly unfounded claims or abusive court proceedings brought against natural and legal persons on account of their engagement in public participation. Notably, the directive only applies to "civil matters with cross-border implications", although an accompanying European Commission Recommendation states that member states "should aim to include in their national laws similar safeguards for domestic cases", and should ensure their legal frameworks governing "criminal proceedings" provide for the necessary safeguards to address SLAPPs. Member states are required to implement the directive by May 2026.

Of note, while the directive has over 21 provisions with various rules on definitions, procedural safeguards, accelerated treatment of applications, and support for defendants, the Dutch implementing bill is only two pages long, and contains only one article. In this regard, the bill amends the Code of Civil Procedure, and inserts a new Article 224a into the code. It seeks to implement Article 10 of the directive on security for costs, and the Article 224a amendment to the code provides that in court proceedings brought against natural or legal persons on account of their engagement in public participation, the court may, at the request of the other party, oblige the person instituting the action to provide security for the costs of the proceedings and damages under Articles 10 and 14 of the Anti-SLAPP Directive which they could be ordered to pay. The provision does not apply if it would hinder effective access to justice for the person from whom security is sought.

Crucially, the Explanatory Memorandum to the bill states that "with the exception of the measure of security for legal costs and damages" included in Article 10 of the directive, "Dutch (procedural) law already provides for the measures prescribed by the Directive". It continues, "[t]herefore, no separate implementation is required for this". As such, the bill contains no further implementing provisions.

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Notably, a consultation period on the bill was open until 12 November. A coalition of 25 press freedom and human rights organisations (CASE) made a submission in response to the consultation, stating that the Dutch bill “does not meet the Directive’s minimum standards regarding effective safeguards”, and that “it does not offer meaningful protection to SLAPP targets in its current form”. The submission makes a number of recommendations, including that the bill should include the definition and indicators to assess a SLAPP, as otherwise, “Dutch judges are provided with little guidance when assessing potential SLAPP cases”. Finally, the coalition is “disappointed” that the bill “focuses solely on the protection against SLAPP cases with a cross-border element”, and states that the Dutch Government “should ensure that protection is provided for in domestic SLAPP cases as well”.

Wijziging van het Wetboek van Burgerlijke Rechtsvordering ter implementatie van Richtlijn (EU) 2024/1069 betreffende bescherming van bij publieke participatie betrokken personen tegen kennelijk ongegronde vorderingen of misbruik van procesrecht (‘strategische rechtszaken tegen publieke participatie’), 7 oktober 2024

https://www.internetconsultatie.nl/antislapp/b1

Amendment of the Code of Civil Procedure to implement Directive (EU) 2024/1069 on the protection of persons involved in public participation against manifestly unfounded claims or abusive litigation ("strategic litigation against public participation"), 7 October 2024

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