[BE] Bill for the transposition of the EU Anti-SLAPP Directive

IRIS 2025-3:1/10

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On 26 February 2025 the Belgian Federal Parliament (Chamber of Representatives, Commission of Justice) started the process of introducing a bill in order to transpose the Anti-SLAPP Directive 2024/1069 of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (IRIS 2024-3:1/5). The bill was submitted by the Green Party and Ecolo on 18 February 2025, and is currently under discussion in the Commission of Justice, before being referred to a plenary session in parliament for the final vote. The EU Anti-SLAPP Directive (the Directive) needs to be transposed into national law by 7 May 2026. The bill is not only designed to transpose the EU Directive but also integrates some of the provisions of the Anti-SLAPP Recommendations of the European Commission of 27 April 2022 (IRIS 2022-5:1/6) and of the Committee of Ministers of the Council of Europe of 5 April 2024 (IRIS 2023-4:1/7). The bill in parliament is based on a proposal of a model law elaborated by a group of experts of the Belgian anti-SLAPP working group that has been monitoring developments related to SLAPPs in Europe and in Belgium since 2023.

According to the explanatory memorandum, the bill aims to combat a worrying phenomenon since the purpose of the "slapper" is to stifle public debate, through the abuse of the judiciary. It also refers to the obligation that all member states of the Council of Europe have under Article 10 of the European Convention on Human Rights (ECHR) “to ensure a safe and favourable environment for everyone to participate in the public debate without fear". For claimants in SLAPP-proceedings it is not about winning the lawsuit, but mainly about deterring their critics with the prospect of high legal costs, protracted legal proceedings or the risk of being ordered to pay hefty damages.

The proposal aims first and foremost to help ensure the timely transposition of the Directive while at the same time following up on the recommendations of the Council of Europe and the European Commission, which have a broader scope of application than the Directive. Indeed, the Directive aims at a minimum harmonisation within the European Union (Directive, recital 21) and leaves room for more favourable provisions to protect persons who engage in public participation from manifestly unfounded claims or abusive court proceedings, including national provisions providing for more effective procedural safeguards

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regarding the right to freedom of expression and information, as guaranteed by Article 10 ECHR (Directive, Article 3(1)). Therefore the bill opts for a broader approach than the strict transposition of the Directive into Belgian law at two levels: not only does it seek to apply to SLAPPs of a cross-border nature, but also to SLAPPs where both claimant and defendant are domiciled in Belgium, without any cross-border impact. In addition to civil proceedings, the bill also seeks to apply to SLAPPs through criminal proceedings.

Otherwise, the bill is very close to the provisions of the Directive. It clarifies when there is "public participation" and what the criteria or indicators are for qualifying a lawsuit as abusive court proceedings or as a manifestly unfounded claim against forms of public participation. Through a series of additional provisions in the Judicial Code and in the Code of Criminal Procedure, the main procedural guarantees of the Anti-SLAPP Directive are transposed into Belgian law. These include, in particular, the possibility for the court to dismiss a manifestly unfounded claim at an early stage of the proceedings. In line with the Directive, the bill allows associations, organisations, trade unions and other entities to act as amici curiae, in support of the defendant. It also opts for a specific sanction in the case of a SLAPP, as the Directive requires effective, proportionate and dissuasive sanctions. Moreover, the plaintiff can also be ordered, on request or even ex officio, to pay damages to the defendant. The damages can include all attributable types of procedural costs, including the full costs incurred by the defendant for legal representation, unless such costs are excessive.

The bill also introduces, via a new section in the Code of Private International Law, the possibility to refuse recognition and enforcement of judgments given in third countries that qualify as SLAPPs. A new article in the same code gives Belgian courts jurisdiction to hear claims for compensation for damage and costs suffered by a natural or legal person domiciled or established in Belgium as a result of a SLAPP claim brought before a court in a country outside the European Union by a claimant residing or established outside the European Union. The Federal Institute for the Protection and Promotion of Human Rights (FIRM-IFDH) designated by the Federal Department of Justice as the central focal point in the fight against SLAPPs in Belgium, is assigned the task of ensuring access to information, support and transparency mentioned in Article 19(1) of the Directive. This concerns, in particular, information on available procedural guarantees and legal remedies and on existing support measures such as legal aid and financial and psychological support, as well as the organisation of and participation in awareness-raising campaigns. Finally, the government is charged with providing support for initiatives aimed at raising awareness and organising information campaigns on SLAPPs within one year of the entry into force of the Anti-SLAPP Directive.

Proposal on measures to protect persons participating in public debate against manifestly unfounded legal claims or abusive legal proceedings

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("strategic lawsuits against public participation" – SLAPP), 18 February 2025, DOC 56 0728/001

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