

# Study Recommends anti-SLAPP Directive

Thomas Wahl



## News

In a [study](#) commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee researchers from the University of Aberdeen recommended that the EU takes a legislative initiative with a view to stemming the flow of litigation which is intended to suppress public participation in matters of public interest. Europe is facing a growing phenomenon of retaliatory lawsuits that are typically brought forward by powerful actors (e.g., companies, public officials in their private capacity, high-profile persons) against persons with a watchdog function (e.g., journalists, activists, academics, trade unions, civil society organisations, etc.) in order to censor, intimidate, and silence critics – so-called “Strategic Lawsuits Against Public Participation” (SLAPPs).

The study analysed legal definitions of SLAPP and assessed the compatibility of anti-SLAPP legislation with EU law. It also looked at models of anti-SLAPP legislation in other jurisdictions (e.g. United States, Canada, Australia) and recommends that the EU should follow a distinctive approach, although good practices can be drawn from these jurisdictions. Furthermore, legislative intervention must be formulated in a manner which empowers national courts to attain the intended outcome of expeditious dismissal of cases without harming potential claimants' legitimate rights to access courts. Properly framed anti-SLAPP legislation affords the claimant the opportunity to present legitimate claims to the court and therefore satisfies the requirements of Art. 6 ECHR, the study says. It is submitted, therefore, that the relationship between the rights of pursuers and defendants in defamation cases should be revisited to remedy existing imbalance. In addition to the adoption of an anti-SLAPP EU Directive, the authors of the study recommend a recast of the Brussels Ia Regulation and a reform of the Rome II Regulation.

Since 2018, the EP has repeatedly and unsuccessfully called on the Commission in various initiatives to tackle a European regulatory proposal on SLAPP. In June 2020, civil society organisations called on the EU in a [joint statement](#) to stop gag lawsuits against public interest defenders (→ [eucriM 2/2020, 106-107](#)). MEPs are making another attempt and recently submitted a [draft motion for a resolution](#) “on the strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society”. At the beginning of 2021, the EU Commission set up an [expert group against SLAPP](#) which will assist the Commission in the preparation of respective legislative proposals and policy initiatives.

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