

11 November 2024

Undersigned press freedom and human rights organizations call on the Dutch government to take more effective measures to transpose the EU anti-SLAPP Directive. While we welcome the swift steps taken to implement the Directive in the Netherlands, the current proposal does not do justice to the severity of SLAPPs and the obligation to implement effective and accessible safeguards.

Through the Coalition Against SLAPPs in Europe (CASE), our organizations have long advocated for robust measures to address the harmful nature and dire impact of Strategic Lawsuits Against Public Participation (SLAPPs). These lawsuits specifically target journalists, media outlets, human rights defenders, and civil society organizations with the aim of intimidating and silencing them. SLAPPs have a direct impact on our democracy by undermining the ability of public watchdogs to operate freely and effectively.

Earlier this year, we [welcomed the adoption of the EU anti-SLAPP Directive](#) but emphasized that it should be considered the *minimum standard* needed to protect public watchdogs against SLAPPs. We have also urged the EU member states to ensure that their national legislation not only transposes the Directive but also reflects non-legal instruments such as the [EU Commission's anti-SLAPP Recommendation of 27 April 2022](#) and the Council of Europe's Committee of Ministers [Recommendation CM/Rec\(2024\)2](#) on countering the use of SLAPPs.

Our organizations have assessed the Dutch draft [anti-SLAPP Implementation Act](#) (the Draft Act), and are concerned that it does not offer meaningful protection to SLAPP targets in its current form. It does not meet the Directive's minimum standards regarding effective safeguards nor does it include the protections in the EU Commission's and Council of Europe's anti-SLAPP Recommendations.

Indicators for assessment of SLAPPs need to be included

We regret that the definition and indicators to assess a SLAPP, as provided for in the Directive and the Council of Europe Recommendation, have not been included in the draft Act, and urge the Dutch government to do so. By not including SLAPP-indicators in the law, Dutch judges are provided with little guidance when assessing potential SLAPP cases. In the interest of legal certainty, this guidance is crucial.

Instead of including guiding indicators for assessing SLAPPs, the Explanatory Memorandum refers to Dutch case law on abuse of legal process (Article 3:13 of the Dutch Civil Code). However, this provision (and the related case law) does not align with the objectives of the Directive. When invoking art. 3:13, the judge assesses whether a right has been exercised for a purpose other than that for which it was intended. Yet, as the Directive also points out, actions outside the courtroom and prior to the legal process are often characteristic aspects of SLAPPs. For example, "intimidation, harassment or threats on the part of the claimant or the claimant's representatives, before or during the proceedings", is an indicator of a SLAPP according to the Directive. Yet, the evaluation of such circumstances are currently not an established part of the assessment of art. 3:13 of the Dutch civil code.

To provide more clarity and a strong legal basis for SLAPPs, our organizations therefore recommend that the available indicators as outlined in the Directive and the Council of Europe Recommendation to assess a SLAPP are included in the law.

Effective safeguards on early dismissal and compensation of costs do not meet minimum standards

With the exception of the provision on securities, the Explanatory Memorandum states that the safeguards for early dismissal and full compensation for costs as outlined in the Directive are already provided for in Dutch law. However, by not making specific safeguards available for SLAPP targets, our organizations strongly believe that the Draft Act does not offer *effective access* and hereby does not align with the direction offered by recital 32 of the Directive that states "the exercise of those safeguards is not unduly arduous".

Firstly, the Draft Act creates a barrier to effective access to early dismissal and does therefore not comply with the minimum standards as outlined in the Directive. Article 7 of the Directive states that member states must ensure that a request for early dismissal is treated in an accelerated manner. This allows for timely intervention to keep costs for SLAPP-targets minimal. The Explanatory Memorandum states that no legal change is needed in Dutch law because SLAPP-targets can start separate summary proceedings to request dismissal of the case. This does *not align* with the Directive's mandate as this would increase, rather than lower, the costs for SLAPP targets. A specific legal provision for (an expedited handling of) a request for early dismissal in the same procedure in cases of SLAPPs would better reflect the Directive.

Secondly, we are concerned about effective access to the full compensation for costs. The Explanatory Memorandum states that it is already possible to recover the full costs of legal representation. However, while this is theoretically possible, the remedy is rarely awarded, even when courts do find abuse of process. Only statutory fees are awarded in the vast majority of cases, which is problematic as the gap between the actual costs and the awarded costs can be very large. Without a specific remedy for full compensation in SLAPP-cases, there are therefore strong concerns about the *effective access* to this safeguard and therefore compliance with the Directive.

Safeguards needed for domestic SLAPP cases

We are disappointed to see that the Draft Implementation Act focuses solely on the protection against SLAPP cases with a cross-border element. As we highlighted previously, the Dutch Government should ensure that protection is provided for in domestic SLAPP cases as well, in line with the recommendations from the European Commission and the Council of Europe. Such protection is urgently needed especially since [recent research by Free Press Unlimited](#) documented that in the Netherlands, SLAPP cases often do not concern cases with a cross-border element. Therefore, to acknowledge the reality of SLAPPs in the Netherlands and offer meaningful protection, we urge the Dutch Government to implement anti-SLAPP safeguards for cross-border and domestic cases alike.



Our organizations urge the Dutch government to address our recommendations in the final text of the Implementation Act, thereby ensuring that the *minimum standards* in the EU anti-SLAPP Directive are met and taking a frontrunning role by promoting more ambitious and progressive anti-SLAPP protections. Adopting robust legislative and regulatory measures to protect against SLAPPs is not only important in terms of preventing these forms of intimidation from taking place in the Netherlands, but also to maintain the Netherlands' longstanding reputation as a champion of freedom of expression and human rights globally.

Signed

Amnesty International
Association of European Journalists (AEJ Belgium)
Blueprint for Free Speech
Civic Initiatives (Serbia)
Community Media Forum Europe
Croatian Journalists' Association (CJA)
European Centre for Press and Media Freedom (ECPMF)
European Environmental Bureau (EEB)
European Federation of Journalists (EFJ)
FIBGAR
Foundation Atelier for Community Transformation - ACT - Bosnia and Herzegovina
Free Press Unlimited
Frente Cívica (Portugal)
German Union of Journalists (dju in ver.di)
Global Witness
IFEX
Institute for Mass Media - Cyprus
International Press Institute (IPI)
Legal Human Academy - Denmark/Belgium
Media Diversity Institute
OBC Transeuropa (OBCT)
Pro Publico
Sherpa
South East Europe Media Organisation (SEEMO)
The Daphne Caruana Galizia Foundation