



EUROPEAN COMMISSION

*Brussels, 18.08.2022
C(2022)6042 final*

Dear President,

The Commission would like to thank the Senát for its Opinion on the proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation') {COM(2022) 177 final}.

The Commission has carefully taken note of the Opinion of the Czech Senát and would like to make the following clarifications.

Regarding the scope of application, the Commission would like to stress that a broad scope, as reflected in the proposed Directive, is meant to ensure that the protection covers all potential targets of strategic lawsuits against public participation, including secondary targets, and all areas of participation in public debate. It is not defined by professional categories (e.g. journalists) but by whether the person engaged in an act of public participation in a matter of public interest. The main beneficiaries of the protection will be journalists and human rights defenders, as they are the main targets of strategic lawsuits against public participation, but if other persons – such as academics, bloggers or various organisations – are targeted by manifestly unfounded or abusive court proceedings, the safeguards in the Directive can be activated, as long as there is a link with an act of public participation on a matter of public interest.

The clarification and specification of the fundamental concepts and the scope of the proposed Directive is ensured by the definition of the most important concepts, like public participation, matter of public interest and abusive court proceedings against public participation. At the same time, the proposal is providing additional guidance, for example by listing, in a non-exhausting fashion, the most common indicators of abuse, such as the disproportionate, excessive or unreasonable nature of the claim, coordinated or multiple legal actions on the same or on related issues, intimidation, harassment or various threats in an attempt to silence the victim. This should allow national courts to identify strategic lawsuits against public participation in a consistent and harmonised manner, ensuring at the same time the flexibility required by a case-by-case analysis.

*Mr Miloš Vystrčil
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1*

Regarding the definition of ‘Matters with cross-border implications’, set forth in Article 4 of the proposal, a matter would be considered having cross-border implications unless both parties are domiciled in the same Member State as the court seized, which indicates that the matter is assumed to be purely domestic. This definition is consistent with general principles of private international law. What is distinctive of the proposed Directive is that even where both parties to the proceedings are domiciled in the same Member State as the court seized, the matter shall be considered to have cross-border implications in two other types of well-defined situations: a) the specific act of public participation concerning a matter of public interest at stake is relevant to more than one Member State. That includes for instance public participation in events organised by Union institutions, such as appearances in public hearings, or statements or activities on matters that are of specific relevance to more than one Member State, such as cross-border pollution or allegations of money laundering with potential cross-border involvement; b) the second situation where a matter should be considered to have cross-border implications is when the claimant or associated entities have initiated concurrent or previous court proceedings against the same or associated defendants in another Member State. In both of those scenarios the matter clearly has cross-border implications as required by Article 81(1) of the Treaty on the Functioning of the European Union.

The proposed Directive would ensure flexibility in the regulation of procedural guarantees and thus the adaptability to national procedural law on different levels. First of all, Member States may provide that measures on procedural safeguards can be taken by the court either under an application from the affected party or on its own motion. As for third party intervention, Article 7 of the proposed Directive does not define the notion of a formal party, which is regulated in accordance with the criteria laid down by national law. Member States are only required to ensure that courts may accept the participation in the proceedings of non-governmental organisations safeguarding or promoting the rights of persons engaging in public participation, as they are best suited to give further support to targets of strategic lawsuits against public participation. Flexibility is ensured, as these organisations may take part in the proceedings either in support of the defendant or to provide information to the court, and it will be for Member States to regulate the procedural requirements of intervention, in accordance with the procedural rules of their national systems.

Finally, the stay of the main proceedings is meant to ensure that no unnecessary and burdensome procedural activity is carried on while a decision is taken on the early dismissal. The objective of this provision is to minimise the impact of abusive court proceedings both on the target of a strategic lawsuit against public participation and on the efficiency of national court systems.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senát and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Margrethe Vestager
Executive Vice-President*

*Didier Reynders
Member of the Commission*