

# COUNTERING THE USE OF SLAPPS

Division for Cooperation on Freedom of Expression

## MODULE 1

# Introduction to Strategic Lawsuits Against Public Participation

*(Training material to be shared with trainers only)*

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# COUNTERING THE USE OF SLAPPS

## Module objective

The aim of this session is to introduce Strategic Lawsuits Against Public Participation (SLAPPs), including their historical context, impact on human rights, and the formation of the European movement that led to the European response to these challenges. The session will also explain how anti-SLAPP measures are designed to prevent misuse of the legal system in ways that undermine the right to freedom of expression while still upholding justice for genuine cases of defamation, privacy invasion, and other rights.

## Session techniques and methods

- ▶ Brainstorming
- ▶ Presentations

## Duration

- ▶ 60 - 75 minutes

## HOW FAMILIAR ARE YOU WITH STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION?

### → Brainstorming Exercise

Allocated time: 10 -15 minutes

#### Guidance for Trainers

The training on SLAPPs will begin with a group brainstorming session, facilitated by the trainer, to discuss participants' familiarity with Strategic Lawsuits Against Public Participation (SLAPPs).

The trainer should ask participants whether they know what SLAPPs are and if they have ever encountered them. This can be particularly relevant for judges or those involved in SLAPP cases as lawyers, victims, or in any other capacity. The trainer can also ask how participants dealt with SLAPPs, if applicable.

Participants are encouraged to share their thoughts, which can be written on a flip chart, on post-it notes placed on the wall, or on an interactive whiteboard. At this stage, there should be no critique or discussion of the contributions; the trainer's role is limited to listing ideas and preventing premature debate.

Once all responses have been noted, the trainer will facilitate feedback, including discussion, analysis, and categorization of the ideas contributed. The trainer can wrap up the session by thanking participants for their contributions. If possible, the paper on which the contributions have been noted should be left on the wall as a reminder of the various identifying characteristics that the group has developed.

Questions to guide the discussions:

- ▶ Are you familiar with SLAPPs?
- ▶ Have you heard of any national or international SLAPP cases? If yes, which case(s)?
- ▶ How would you define SLAPPs, and what elements are relevant to recognizing them?
- ▶ Have you experienced or been involved in any SLAPP case?
- ▶ Do you know of any available support for SLAPP victims or targets?

# COUNTERING THE USE OF SLAPPS

## SLAPPS AND HUMAN RIGHTS

### → Presentation

Allocated time: 20 - 30 minutes

#### Guidance for trainers

The training on SLAPP will continue with a Power Point Presentation on Strategic Lawsuits Against Public Participation, what they are and their main goals. The impact abusive lawsuits have on free expression, public participation, and the tactics used to create a chilling effect on public watchdogs are explained in detail. The presentation will also touch upon the need to balance various competing rights, especially the right to a fair trial. The text below is largely taken from the [Explanatory Memorandum](#) to Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPS). Participants will receive a copy of the explanatory memorandum after this presentation. Although this will be a presentation, the trainer should allow adequate opportunity for participants to ask questions and contribute to discussions at some stage of the presentation.

#### Definition of SLAPPS

Strategic Lawsuits Against Public Participation (“SLAPPS”) are understood as legal actions that are threatened, initiated, or pursued as means of harassing or intimidating their targets, and that seek to prevent, inhibit, restrict, or penalise free expression on matters of public interest and the exercise of rights associated with public participation. This definition is provided in Europe through the [Recommendation CM/Rec\(2024\)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation \(SLAPPS\)](#).

Detailed presentation of Recommendation CM/Rec(2024)2 will be done at Module 4.

Apart from legal actions, SLAPPS can often be accompanied by aggressive reputation management practices which seek to discredit the defendant or reshape the claimant’s reputation to undermine the defendant’s argument. Unlike legal practitioners, reputation management firms are hardly regulated, making it much harder to challenge or counter their activities via official channels. Those affected by SLAPPS may find that the accompanying attacks on their character or professional integrity undermine their ability to pursue further investigations in future.

SLAPPS have far-reaching consequences: they impede individual rights to expression whilst undermining the free exchange of ideas and information essential in a pluralistic society. SLAPPS can lead to self-censorship and a ‘chilling effect’ on free speech, as journalists or other affected parties withdraw investigations and publications fearing legal and financial consequences they cannot afford to bear. Media outlets and other actors may move away from lines of investigation expected to attract legal risk through intimidatory actions that are core to SLAPPS, such that the public loses access to information.

Apart from direct harm caused to affected parties, SLAPPS can have important consequences in terms of shutting down debate on matters of public interest. Where SLAPPS are not challenged and jurisdictions are perceived to be lenient towards this type of threat, this leads to a ‘chilling effect’ where media and public interest actors refrain from critiques or investigations, thus impoverishing public discourse. Scrutiny, transparency and accountability necessary for robust debate are jeopardised by the silencing of voices that challenge powerful actors that employ SLAPP tactics.

# COUNTERING THE USE OF SLAPPS

## Difference between SLAPPs and other forms of human rights infringements

SLAPPs differ from genuine defamation, privacy, copyright, or other legal claims, which arise out of the need to genuinely protect rights. SLAPPs aim at obstructing public participation rather than protecting rights. By targeting journalists, human rights defenders, and other civil society actors who contribute to public interest matters, SLAPPs undermine a wide range of their rights, including their rights to freedom of expression, assembly, association, and public participation<sup>1</sup>.

SLAPPs do not solely challenge the right to freedom of expression but can also affect the enjoyment of a number of other essential rights protected by the Convention, including the right of access to a court (Article 6, right to a fair trial); the right to reputation (Article 8, right to respect for private and family life); and the right to an effective remedy (Article 13). Assessing whether a violation of these rights has occurred requires a careful balancing exercise between the competing interests at stake.

The impact of SLAPPs can be particularly felt in relation to the Court's detailed articulation of various Convention Articles. Article 6 provides that everyone has the right to a fair trial and that they must be able to present their case effectively before a court, in keeping with the principles of procedural fairness and equality of arms. The right of access to a court for the purposes of Article 6 is an inherent aspect of the safeguards enshrined in Article 6. However, the 'right to a court' and the right of access are not absolute.

They may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought. Various procedural safeguards, which will be discussed later, are intended precisely to maintain a balance between competing rights.

## Use of the term SLAPPs in Europe

The term 'SLAPP' was first popularised in the United States in the 1980s, but its origins can be traced back to earlier legal discussions and cases. The concept behind SLAPP lawsuits had been recognised by legal scholars and activists for some time before the term was coined. In the United States, SLAPP suits date back to cases when citizens were sued for speaking out against government corruption. With the rise of political activism in the 1960s and 1970s, suits to suppress speech became a popular tool to stifle those perceived to be obstacles or a threat.<sup>2</sup>

In Europe, usage of the term SLAPPs grew between 2017 and 2018 and is closely linked with the assassination of Maltese investigative journalist Daphne Caruana Galizia, who was brutally killed by a car bomb. At the time of her assassination, she had 47 active defamation lawsuits against her.

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1. UN Office of the High Commissioner, [The impact of SLAPPs on human rights & how to respond](#).

2. SLAPP: the background of Strategic Lawsuits Against Public Participation, <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>

# COUNTERING THE USE OF SLAPPS

## TIMELINE OF EVENTS LEADING TO EUROPEAN INITIATIVES TO COUNTER SLAPPS

### → Presentation

Allocated time: 10 -15 minutes

#### Guidance for trainers

This presentation offers a brief timeline of events leading to the development of European instruments on Anti-SLAPPS. To make it more user-friendly for participants, the PowerPoint presentation will be accompanied by pictures and references for each event.

- ▶ **16 October 2017** – Maltese investigative journalist Daphne Caruana Galizia is assassinated.
- ▶ **10 April 2018** – Member of Parliament David Casa calls on the European Commission to come forward with Anti-SLAPP legislation.
- ▶ **13 June 2018** – 12 November 2019 – At least three events are organised by civil society and academia in Brussels and Aberdeen to discuss SLAPPS, including the preparation of a European Model Bill.
- ▶ **24 February 2020** – [Coalition Against SLAPPS in Europe \(CASE\)](#) – at that time a small group of people – gathered in Amsterdam to write its strategy on how to combat SLAPPS in Europe. CASE became the leading civil society coalition in Europe against SLAPPS.
- ▶ **27 October 2020** – Council of Europe Human Rights Commissioner Dunja Mijatović [called for action against SLAPPS](#).
- ▶ **1 December 2020** – CASE submitted to the European Commission an [EU Anti-SLAPP model law](#).
- ▶ **3 December 2020** – The European Commission established an [expert group against SLAPPS](#) consisting of 35 experts.
- ▶ **26 March 2021** – CASE called on the Council of Europe to adopt a stand-alone recommendation on SLAPPS.
- ▶ **11 November 2021** – European Parliament adopted an Own Initiative Report (INI) on strengthening democracy, media freedom, and pluralism in the EU: [the undue use of actions under civil and criminal law to silence journalists, NGOs, and civil society](#).
- ▶ **1 January 2022** – Council of Europe established the [Committee of Experts on Strategic Lawsuits Against Public Participation \(MSI-SLP\)](#).
- ▶ **15 March 2022** – The European Court of Human Rights published a judgment where it mentioned SLAPPS for the first time, referring to Dunja Mijatović's call for action blog. Case [OOO Memo v. Russia](#), Application no. 2840/10, 15 March 2022.
- ▶ **27 April 2022** – European Commission presented the [Recommendation \(EU\) 2022/758 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings](#) ('Strategic lawsuits against public participation').
- ▶ **5 April 2024** – The Committee of Ministers of the Council of Europe adopted [Recommendation CM/Rec\(2024\)2 on countering the use of Strategic Lawsuits Against Public Participation \(SLAPPS\)](#).
- ▶ **11 April 2024** – The European Parliament adopted [Directive \(EU\) 2024/1069 of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings](#) ('Strategic lawsuits against public participation').

# COUNTERING THE USE OF SLAPPS

## SLAPPS AS A PROBLEM ACROSS EUROPE

### → Presentation

Allocated time: 10 minutes

#### **London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19<sup>3</sup>**

The report focuses on legal cases recently brought to the London High Court against investigative journalists and their publishers that bear the hallmarks of SLAPPS. It explores the challenges that they have faced in defending themselves, highlighting issues within the English and Welsh legal system that can create a more 'claimant friendly' environment, despite reforms in 2013. The report concludes that those wealthy enough can evade scrutiny regardless of how effectively a particular law has balanced out rights to privacy and free speech, because it is the process of being subject to abusive legal threats that is the punishment for media and can force them to concede.

#### **Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington<sup>4</sup>**

This study was commissioned by the Committee of Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament to analyse SLAPP cases and threats which were initiated in 2022 and 2023. It provides a detailed analysis of the topics of public interest associated with the identified legal actions or legal threats, and to the extent possible, information about claimants and defendants, the cause of action, and whether there was a cross border element.

Between 01 January 2022 and 31 August 2023, based on the databases searched, 47 legal actions against 102 defendants were identified. Political figures and public officials were the most common claimants, accounting for 42.6% of total claimants followed by companies (21.3%), legal professionals (10.7%), other individuals (8.5%), civil society (6.4%), political parties (4.2%), local government (4.2%), and States (2.1%). While 47 cases were identified, these cases involved a total of 102 defendants. A relative majority of defendants were individual journalists (44.1%). Individual journalists were, at times, targeted even when the publication was published by a media outlet. It was not uncommon for both the media outlet and an individual journalist to be joined to the same legal action. Media outlets accounted for 28.4% of defendants, while editors-in-chief or directors of media outlets accounted for 7.8%. Nongovernmental organisations amounted to 13.7%. The remainder of defendants were publishers (3%), followed by an activist (1%), a journalistic source (1%), and other individuals (1%).

#### **SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation<sup>5</sup>**

Following the first CASE report in 2022, SLAPP lawsuits continued to be filed throughout the year, while more lawsuits from previous years were made known to CASE and inputted into the CASE database. From the 570 cases that were analysed in 2022, CASE's database increased to over 820 cases in 2023 – 161 of which were lawsuits filed in 2022, a significant jump compared to the 135 filed in 2021.

3. London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19, <https://fpc.org.uk/wp-content/uploads/2022/04/London-Calling-publication-April-2022.pdf>

4. Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL\\_STU\(2023\)756468\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL_STU(2023)756468_EN.pdf)

5. SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation, <https://www.the-case.eu/wp-content/uploads/2023/08/20230703-CASE-UPDATE-REPORT-2023-1.pdf>

# COUNTERING THE USE OF SLAPPS

## SLAPPS AT NATIONAL LEVEL

### → Presentation

#### Allocated time: 10 -15 minutes

In this section, the national expert offers an overview of SLAPPS, including relevant background information, contextual insights, and available statistics. It is essential to present this information in a way that highlights the specific characteristics and impact of SLAPPS within the national context. To provide a clearer understanding, the expert should incorporate concrete case studies and examples that illustrate how SLAPPS manifest in the country.

## EXERCICES – MODULE 1

### Introduction to Strategic Lawsuits Against Public Participation

*(Training material to be shared with participants)*

#### HOW FAMILIAR ARE YOU WITH STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION?

##### → Brainstorming Exercise

Questions to guide the discussions:

- ▶ Are you familiar with SLAPPS?
- ▶ Have you heard of any national or international SLAPP cases? If yes, which case(s)?
- ▶ How would you define SLAPPS, and what elements are relevant to recognizing them?
- ▶ Have you experienced or been involved in any SLAPP case?
- ▶ Do you know of any available support for SLAPP victims or targets?

After the discussion, the trainer goes through the PowerPoint presentation to provide responses and feedback on the discussions.

## MODULE 1

# Introduction to Strategic Lawsuits Against Public Participation

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## PRESENTATION OUTLINE

- ▶ SLAPPS and human rights
- ▶ Timeline of events leading to European initiatives to counter SLAPPS
- ▶ SLAPPS as a problem across Europe
- ▶ SLAPPS at national level

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# HOW FAMILIAR ARE YOU WITH STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION?

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## QUESTIONS TO GUIDE THE DISCUSSIONS

- ▶ Are you familiar with SLAPPS?
- ▶ Have you heard of any national or international SLAPP cases?  
If yes, which case(s)?
- ▶ How would you define SLAPPS, and what elements are relevant to recognizing them?
- ▶ Have you experienced or been involved in any SLAPP case?
- ▶ Do you know of any available support for SLAPP victims or targets?

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# SLAPPS AND HUMAN RIGHTS

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## DEFINITION OF SLAPPS

Strategic Lawsuits Against Public Participation (“SLAPPs”) are understood as legal actions that are threatened, initiated, or pursued as means of harassing or intimidating their targets, and that seek to prevent, inhibit, restrict, or penalise free expression on matters of public interest and the exercise of rights associated with public participation. This definition is provided in Europe through the Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation (SLAPPs).

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## ACCOMPANIED BY AGGRESSIVE REPUTATION MANAGEMENT PRACTICES

Apart from legal actions, SLAPPS can often be accompanied by aggressive reputation management practices which seek to discredit the defendant or reshape the claimant's reputation to undermine the defendant's argument. Unlike legal practitioners, reputation management firms are hardly regulated, making it much harder to challenge or counter their activities via official channels. Those affected by SLAPPS may find that the accompanying attacks on their character or professional integrity undermine their ability to pursue further investigations in future.

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## SLAPPS FAR-REACHING CONSEQUENCES

SLAPPS impede individual rights to expression whilst undermining the free exchange of ideas and information essential in a pluralistic society. SLAPPS can lead to self-censorship and a 'chilling effect' on free speech, as journalists or other affected parties withdraw investigations and publications fearing legal and financial consequences they cannot afford to bear. Media outlets and other actors may move away from lines of investigation expected to attract legal risk through intimidatory actions that are core to SLAPPS, such that the public loses access to information.

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## CHILLING EFFECT

Apart from direct harm caused to affected parties, SLAPPS can have important consequences in terms of shutting down debate on matters of public interest. Where SLAPPS are not challenged and jurisdictions are perceived to be lenient towards this type of threat, this leads to a '**chilling effect**' where media and public interest actors refrain from critiques or investigations, thus impoverishing public discourse. Scrutiny, transparency and accountability necessary for robust debate are jeopardised by the silencing of voices that challenge powerful actors that employ SLAPP tactics.

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## DIFFERENCE BETWEEN SLAPPS AND OTHER FORMS OF HUMAN RIGHTS INFRINGEMENTS

“SLAPPs differ from genuine defamation, privacy, copyright, or other legal claims, which arise out of the need to genuinely protect rights. SLAPPs aim at obstructing public participation rather than protecting rights. By targeting journalists, human rights defenders, and other civil society actors who contribute to public interest matters, SLAPPs undermine a wide range of their rights, including their rights to freedom of expression, assembly, association, and public participation.”

UN Office of the High Commissioner, the impact of SLAPPs on human rights & how to respond

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## SLAPPS IMPACT THE ENJOYMENT OF OTHER RIGHTS

SLAPPS do not solely challenge the right to freedom of expression but can also affect the enjoyment of a number of other essential rights protected by the Convention, including the right of access to a court (Article 6, right to a fair trial); the right to reputation (Article 8, right to respect for private and family life); and the right to an effective remedy (Article 13). Assessing whether a violation of these rights has occurred requires a careful balancing exercise between the competing interests at stake.

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## USE OF TERM SLAPPS IN EUROPE

The term 'SLAPP' was first popularised in the United States in the 1980s, but its origins can be traced back to earlier legal discussions and cases. The concept behind SLAPP lawsuits had been recognised by legal scholars and activists for some time before the term was coined.

The term SLAPPS in Europe emerged between 2017 and 2018 and is closely linked with the assassination of Maltese investigative journalist Daphne Caruana Galizia, who was brutally killed by a car bomb. At the time of her assassination, she had 47 active defamation lawsuits against her.

SLAPP: the background of Strategic Lawsuits Against Public Participation, <https://www.ecpmf.eu/slapp-the-background-of-strategic-lawsuits-against-public-participation/>

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## TIMELINE OF EVENTS LEADING TO EUROPEAN INITIATIVES TO COUNTER SLAPPS

- ▶ **16 October 2017** – Maltese investigative journalist Daphne Caruana Galizia is assassinated.
- ▶ **10 April 2018** – Member of Parliament David Casa calls on the European Commission to come forward with Anti-SLAPP legislation.
- ▶ **13 June 2018 – 12 November 2019** – At least three events are organised by civil society and academia in Brussels and Aberdeen to discuss SLAPPS, including the preparation of a European Model Bill.

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## COUNTERING THE USE OF SLAPPS – MODULE 1

- ▶ **24 February 2020** – Coalition Against SLAPPS in Europe (CASE) – at that time a small group of people – gathered in Amsterdam to write its strategy on how to combat SLAPPS in Europe. CASE became the leading civil society coalition in Europe against SLAPPS.
- ▶ **27 October 2020** – Council of Europe Human Rights Commissioner Dunja Mijatović called for action against SLAPPS.
- ▶ **1 December 2020** – CASE submitted to the European Commission an EU Anti-SLAPP model law.
- ▶ **3 December 2020** – The European Commission established an expert group against SLAPPS consisting of 35 experts.
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## COUNTERING THE USE OF SLAPPS – MODULE 1

- ▶ **11 November 2021** – European Parliament adopted an Own Initiative Report (INI) on strengthening democracy, media freedom, and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs, and civil society.
- ▶ **1 January 2022** – Council of Europe established the Committee of Experts on Strategic Lawsuits Against Public Participation (MSI-SLP).
- ▶ **15 March 2022** – The European Court of Human Rights published a judgment where it mentioned SLAPPS for the first time, referring to Dunja Mijatović’s call for action blog. Case OOO Memo v. Russia, Application no. 2840/10, 15 March 2022.
- ▶ **27 April 2022** – European Commission presented the Recommendation (EU) 2022/758 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’).

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## COUNTERING THE USE OF SLAPPS – MODULE 1

- ▶ **5 April 2024** – The Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2024)2 on countering the use of Strategic Lawsuits Against Public Participation (SLAPPs).
- ▶ **11 April 2024** – The European Parliament adopted Directive (EU) 2024/1069 of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

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# SLAPPS AS A PROBLEM ACROSS EUROPE

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## SLAPPS AS A PROBLEM ACROSS EUROPE

**London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19**

London calling, the issue of legal intimidation and SLAPPS against media emanating from the United Kingdom, 2022, The Foreign Policy Centre and Article 19, <https://fpc.org.uk/wp-content/uploads/2022/04/London-Calling-publication-April-2022.pdf>

**Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington**

Open SLAPP Cases in 2022 and 2023, The Incidence of Strategic Lawsuit Against Public Participation, and Regulatory Responses in the European Union, 2023, Justin Borg Barthet, Francesca Farrington [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL\\_STU\(2023\)756468\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/756468/IPOL_STU(2023)756468_EN.pdf)

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## COUNTERING THE USE OF SLAPPS – MODULE 1

### **SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation**

SLAPPS: A threat to democracy continues to grow, 2023 update, 2023, The Daphne Caruana Galizia Foundation, <https://www.the-case.eu/wp-content/uploads/2023/08/20230703-CASE-UPDATE-REPORT-2023-1.pdf>

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