

COUNTERING THE USE OF SLAPPS – MODULE 4

MODULE 4

European instruments on countering use of SLAPPS

(Training material to be shared with trainers only)

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPs – MODULE 4

PRESENTATION OUTLINE

Understanding the Council of Europe's and EU's standards against
SLAPPs Presentation of Council of Europe and European Union
instruments on SLAPPs Discussion with participants on practical
implications of instruments on SLAPPs

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

UNDERSTANDING THE COUNCIL OF EUROPE'S AND EU'S STANDARDS AGAINST SLAPPS

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

SMALL GROUP DISCUSSION

Participants are divided into three or four groups, each focusing on a specific aspect of Anti-SLAPP measures: legislators (members of parliament and government), judges and prosecutors, lawyers, and civil society representatives. Each group will address a specific question listed below and select a representative to summarise their discussions and proposals.

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

PRESENTATION OF COUNCIL OF EUROPE AND EUROPEAN UNION INSTRUMENTS ON SLAPPS

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

The Council of Europe and the European Union instruments

- ▶ Recommendation CM/Rec(2024)2 of the Committee of Ministers to Member States on countering the use of strategic lawsuits against public participation (SLAPPs).
- ▶ Directive (EU) 2024/1069 of the European Parliament and of the Council, dated 11 April 2024, on protecting individuals who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').
- ▶ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation').

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SCOPE	Applies to administrative, civil and criminal matters	Applies only to civil matters with cross-border implications
DEFINITIONS	Strategic lawsuits against public participation (“SLAPPs”) are understood as legal actions that are threatened, initiated or pursued as a means of harassing or intimidating their target, and which seek to prevent, inhibit, restrict or penalise free expression on matters of public interest and the exercise of rights associated with public participation.	‘Abusive court proceedings against public participation’ mean court proceedings which are not brought to genuinely assert or exercise a right, but have as their main purpose the prevention, restriction or penalisation of public participation, frequently exploiting an imbalance of power between the parties, and which pursue unfounded claims.
KEY TERMS	Public participation Public interest	Public participation Matter of public interest Abusive court proceedings against public participation

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPs – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SLAPP INDICATORS	<p>a. the claimant tries to exploit an imbalance of power, such as their financial advantage or political or societal influence, to put pressure on the defendant;</p> <p>b. the arguments put forward by the claimant are partially or fully unfounded;</p> <p>c. the remedies requested by the claimant are disproportionate, excessive or unreasonable;</p> <p>d. the claims amount to abuse of laws or procedures;</p> <p>e. the claimant engages in procedural and litigation tactics designed to drive up costs for the defendant, such as delaying proceedings, selecting a forum that is unfavourable to public participation or vexatious to the defendant, provoking an onerous workload and pursuing appeals with little or no prospect of success;</p> <p>f. the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;</p> <p>g. the legal action is accompanied by a public relations offensive designed to bully, discredit or intimidate actors participating in public debate or aimed at diverting attention from the substantial issue at stake;</p> <p>h. the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;</p> <p>i. the claimant or associated parties engage in multiple and co-ordinated or cross-border legal actions on the basis of the same set of facts or in relation to similar matters;</p> <p>j. the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.</p>	<p>a. the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;</p> <p>b. the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;</p> <p>c. intimidation, harassment or threats on the part of the claimant or the claimant’s representatives, before or during the proceedings, as well as similar conduct by the claimant in similar or concurrent cases;</p> <p>d. the use in bad faith of procedural tactics, such as delaying proceedings, fraudulent or abusive forum shopping or the discontinuation of cases at a later stage of the proceedings in bad faith.</p>



Co-funded and implemented by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
TYPES OF SLAPPS	Domestic SLAPPS Cross border Multiple or coordinated SLAPPS SLAPPS targeting anonymous public participation	Cross border SLAPPS on civil matters
LEGAL ACTION STAGES	All stages of legal action, including an initial threat of legal action, as well as enforcement proceedings.	All stages of civil legal action, including procedures for interim and precautionary measures, counteractions or other particular types of remedies available under other instruments.
EARLY DISMISSAL	a.courts, on their own initiative, to dismiss a claim as a SLAPP early in the proceedings; and, b.defendants to file applications for early dismissal of claims against public participation, in order to counter the harmful effects of SLAPPS on debate of public interest matters.	Member States shall ensure that courts and tribunals may dismiss, after appropriate examination, claims against public participation as manifestly unfounded, at the earliest possible stage in the proceedings, in accordance with national law.
STAY OF PROCEEDINGS	When national law permits, member States should ensure that, if the defendant applies for early dismissal, the main proceedings are stayed until a final decision on that application is taken.	Not covered



Co-funded and implemented by the Council of Europe

COUNTERING THE USE OF SLAPPs – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SECURITY FOR PROCEDURAL COSTS	<p>Member States should introduce rules, in line with national law and practice, to ensure that in court proceedings against public participation, judicial and other competent authorities have the power to require the claimant to provide security for procedural costs, or for procedural costs and damages, if it considers such security appropriate in view of the presence of SLAPP indicators, as set out in paragraph 8 (above).</p>	<p>Member States shall ensure that in court proceedings brought against natural or legal persons on account of their engagement in public participation, the court or tribunal seised may require, without prejudice to the right of access to justice, that the claimant provide security for the estimated costs of the proceedings, which may include the costs of legal representation incurred by the defendant, and, if provided for in national law, damages.</p>

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
RESTITUTION OF LEGAL COSTS	<p>Member States are encouraged to make appropriate provisions in their national legal systems to enable courts, upon determination that a legal claim constitutes a SLAPP, to order the claimants to bear all the costs of the proceedings, including the full costs of legal representation incurred by the defendant.</p>	<p>Member States shall ensure that a claimant who has brought abusive court proceedings against public participation can be ordered to bear all types of costs of the proceedings that can be awarded under national law, including the full costs of legal representation incurred by the defendant unless such costs are excessive.</p> <p>Where national law does not guarantee the award in full of the costs of legal representation beyond what is set out in statutory fee tables, Member States shall ensure that such costs are fully covered, unless they are excessive, by other means available under national law.</p>
DEATH OR LOSS OF LEGAL CAPACITY OF THE DEFENDANT	<p>Member States should ensure that, upon the death or loss of legal capacity of the defendant, in a pending case against public participation, family members and associates of the original defendant who continue the court proceedings have access to the same remedies and support as the original defendant.</p>	<p>Not covered</p>



COUNTERING THE USE OF SLAPPs – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
ACKNOWLEDGEMENT OF SLAPP VICTIM STATUS AND COMPENSATION FOR DAMAGES	Member States should make adequate provision for SLAPP victims to be acknowledged as such and to be fully compensated for damages incurred as a result of the SLAPP, covering both pecuniary and non- pecuniary damages, such as loss of income and emotional distress as well as compensation for costs and expenses, for example to cover legal and administrative costs.	Not mentioned explicitly but articles 14 and 15 provide for cost awards, penalties for SLAPP claimants and compensation for damages.
CAPPING OF DAMAGES FOR THE CLAIMANT	Member States should, within the possibilities of their national legal systems, provide for the capping of damages, in order to pre-empt abusive or disproportionate financial penalties for the defendants, which would have a chilling effect on their public participation, and to avoid creating financial incentives for filing legal action.	Not covered
CAPPING OF COSTS	Member States should, within the possibilities of their national legal systems, provide for the capping of costs, to ensure defendants are able to mount an effective defence and protect against court procedures being drawn out to exhaust the financial resources of defendants, which would have a chilling effect on their public participation.	Not covered

Co-funded
by the European Union



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
DISSUASIVE MEASURES	<p>Member States should implement effective, proportionate, and dissuasive penalties to deter SLAPPs, considering the claimant's resources. They should provide damages and fines for particularly egregious conduct and compensate for the time lost and psychological harm caused to the defendant. Aggravated penalties for repeat SLAPP claimants should also be considered. Additionally, legislative provisions should allow for the publication of information about SLAPP cases, including the identities of claimants, at the defendant's request and expense, while adhering to European human rights and data protection standards. (summarised)</p>	<p>Member States shall ensure that courts or tribunals seized of abusive court proceedings against public participation may impose effective, proportionate and dissuasive penalties or other equally effective appropriate measures, including the payment of compensation for damage or the publication of the court decision, where provided for in national law, on the party who brought those proceedings.</p>
GROUND FOR REFUSAL OF RECOGNITION AND ENFORCEMENT OF A THIRD-COUNTRY JUDGMENT	<p>Not covered</p>	<p>Member States shall ensure that the recognition and enforcement of a third-country judgment in court proceedings against public participation by a natural or legal person domiciled in a Member State is refused, if those proceedings are considered manifestly unfounded or abusive under the law of the Member State in which such recognition or enforcement is sought.</p>

Co-funded by the European Union



Co-funded and implemented by the Council of Europe

COUNTERING THE USE OF SLAPPs – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
PROTECTION AGAINST THIRD COUNTRY JUDGMENTS	<p>Member States are encouraged to introduce rules to ensure that, where SLAPPs have been brought before judicial or other authorities of a third country against a natural or legal person domiciled in a member State, that person may seek, before judicial or other authorities of the place where they are domiciled, compensation of the damages and the costs incurred in connection with the proceedings before the judicial or other authorities of the third country, irrespective of the domicile of the claimant in the proceedings in the third country.</p>	<p>Member States shall ensure that, where abusive court proceedings against public participation have been brought by a claimant domiciled outside the Union in a court or tribunal of a third-country against a natural or legal person domiciled in a Member State, that person may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third-country.</p>

Co-funded
by the European Union





COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
SUPPORT FOR TARGETS AND VICTIMS OF SLAPPS	<p>Member States should ensure rapid access to comprehensive support for SLAPP targets, including physical protection, legal assistance, financial aid, psychological support, and practical help.</p>	<p>Member States shall ensure that natural or legal persons engaging in public participation referred to in Article 6 have access, as appropriate, to information on available procedural safeguards and remedies and existing support measures such as legal aid and financial and psychological support, where available.</p> <p>Member States shall ensure that legal aid in cross-border civil proceedings is provided in accordance with Council Directive 2003/8/EC (7).</p>
CULTURE OF TRANSPARENCY	<p>Member States should ensure full transparency for SLAPP cases by allowing the publication of court findings and creating a public register of SLAPP cases that is regularly updated and accessible online and offline. They should also provide data to bar associations about the outcomes of these cases, adhering to European human rights and data protection standards.</p> <p><small>Co-funded by the European Union</small></p>  <p>EUROPEAN UNION</p>  <p>CONSEIL DE L'EUROPE</p>	<p>Member States should publish all final judgments from national courts of appeal or highest courts. Additionally, they should provide information on awareness-raising campaigns, preferably in collaboration with civil society organisations, through a readily accessible channel. (Summarised by the author)</p> <p><small>Co-funded and partially supported by the Council of Europe</small></p>

COUNTERING THE USE OF SLAPPs – MODULE 4

Preliminary aspects Procedural safeguard Remedies Other aspects	Council of Europe Recommendation (CM/Rec(2024)2)	EU Directive (2024/1069)
ENTER INTO FORCE & TRANSPOSITION TIMELINE	In force.	Transposition deadline: 7 May 2026

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

DISCUSSION WITH PARTICIPANTS ON PRACTICAL IMPLICATIONS OF INSTRUMENTS ON SLAPPS

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe

COUNTERING THE USE OF SLAPPS – MODULE 4

Following Sessions 1 and 2 of this module, a brainstorming exercise to facilitate discussions on the practical implications of implementing CoE recommendations and EU directives and recommendations at national level will be organised. Participants will receive a list with questions.

Co-funded
by the European Union



COUNCIL OF EUROPE



Co-funded and implemented
by the Council of Europe