

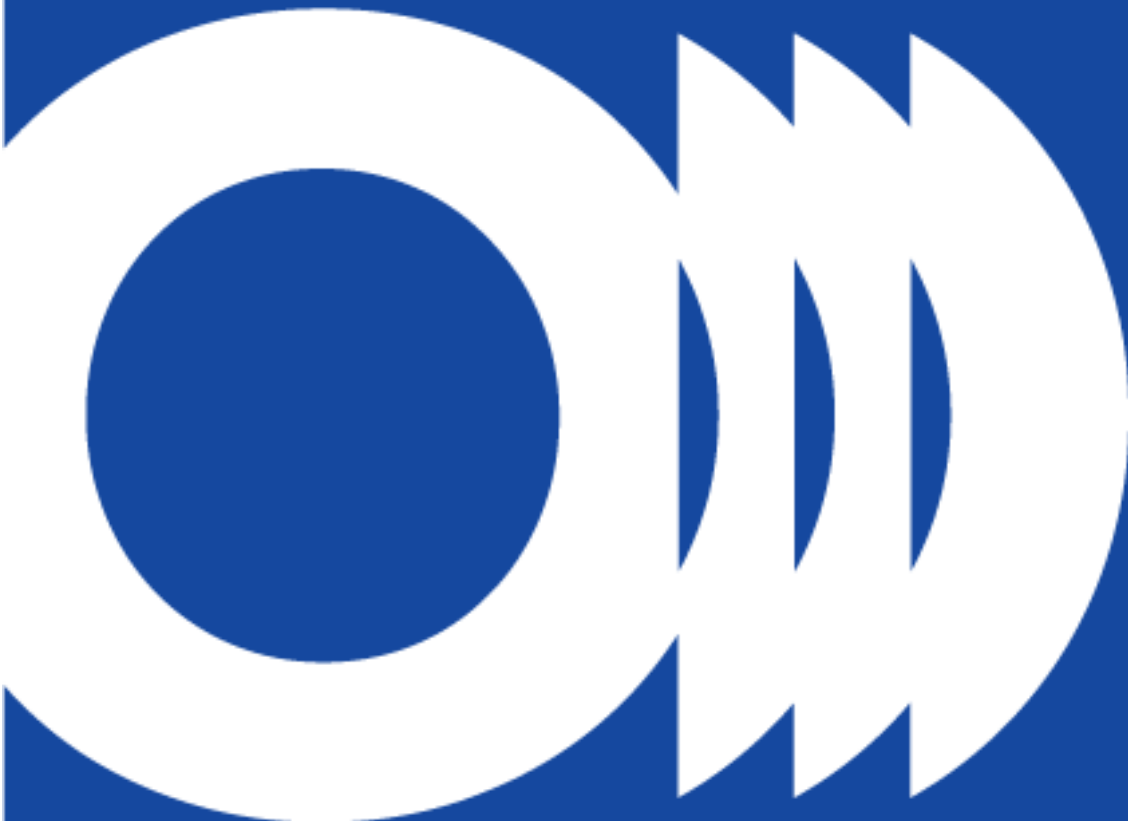
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

EBU response to the European Commission's Anti-SLAPP Initiative

10 JANUARY 2022



Anti-SLAPP Initiative

Fields marked with * are mandatory.

Introduction

With upholding democracy, the rule of law and fundamental rights high on the Commission's agenda ([Political Guidelines](#)), protecting journalists and civil society from strategic lawsuits against public participation (SLAPP) is one of the key actions in the European democracy action plan^[1]. The European Parliament, also concerned about this issue, is drafting an own-initiative report^[2].

SLAPP – a relatively recent form of harassment – are increasingly used against journalists, rights defenders and others (such as media outlets or civil society organisations) who are involved in protecting the public interest. SLAPP are typically meritless lawsuits lodged by powerful individuals or entities (companies or state bodies) against weaker parties who express a critical stance on an issue of major public interest, in order to intimidate and ultimately silence such parties by draining their resources – filing high damages claims or lengthening proceedings, for example.

The Commission's [research](#)^[3] shows that SLAPP are on the rise in the EU. The Council of Europe's Platform^[4], which monitors SLAPP alerts, has also highlighted the growing pressure on journalists in Europe. Given the harm done in this way to the people who play a key role in upholding democracy in the EU by serving the public interest, the EU must act swiftly and decisively to curb SLAPP.

This is why the Commission is conducting this survey on what the EU can do about this. The survey's aim is twofold:

- to identify the problems in this area and get the public's views on what needs to be done to tackle them;
- to ask the public for their views on possible legislative and non-legislative anti-SLAPP measures.

Answer the questions that apply to you or that you are able to answer given your or your organisation's experience.

[1] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European democracy action plan, COM (2020) 790 final, 3.12.2020.

[2] 'Draft report on the strengthening of 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', 2021/2036(INI).

[3] https://ec.europa.eu/info/sites/default/files/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf

[4] <https://www.coe.int/en/web/media-freedom/all-alerts>

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation

- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

If you are a legal practitioner, where do you work?

- Judicial authority
- Law firm
- Other

* First name

Julie

* Surname

Lenoir

* Email (this won't be published)

lenoir@ebu.ch

* Organisation name

255 character(s) maximum

European Broadcasting Union (EBU-UER AISBL)

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

93288301615-56

* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname

- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Myanmar/Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom

- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena
Ascension and
Tristan da Cunha
- Saint Kitts and
Nevis
- Saint Lucia
- United States
- United States
Minor Outlying
Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and
Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

1. Are you familiar with the term ‘strategic lawsuits against public participation’ (SLAPP)?

- Yes
- No
- I don't know/No reply

2. Are you aware of SLAPP in your own country?

- Yes
- No
- I don't know/No reply

Please specify

500 character(s) maximum

Several EBU members have reported that they have been confronted with SLAPPs or serious threats of legal proceedings. These cases reveal misuse of public and private laws. Complaints to administrative authorities (such as data protection authorities, competition authorities and consumer and audiovisual regulators) have also been reported.

Two cases of SLAPP involving our French and Estonian members (France Télévisions and ERR) are detailed on the CoE platform (see Q.18)

3. What do you think is the current situation in terms of SLAPP in your own country?

- The number of cases has been growing considerably
- The number of cases has been slightly growing
- The number of cases has remained the same
- The number of cases has been slightly decreasing
- The number of cases has been decreasing considerably
- I don't know/No reply

**4. Are you aware of SLAPP in (a) country (countries) other than your own?
Specify which country/countries and provide examples.**

- Austria
- Belgium
- Bulgaria
- Croatia
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden

Please provide examples

500 character(s) maximum

Several EBU members have reported cases of cross-border SLAPPs. However, domestic SLAPP cases also appear to be widespread.

5. If you know of one or more SLAPP in the EU, is there a cross-border aspect (the case does not relate to one country only, but to several)? If yes, specify the country/countries involved.

- Austria
- Belgium
- Bulgaria
- Croatia
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden

6. Who is the target (defendant) in the SLAPP you know of?

- Journalist
- Rights defender (individual)
- Media outlet
- Civil society organisation
- Body or institution defending human rights
- Other individual or organisation – please specify
- I don't know/No reply

Please specify

500 character(s) maximum

EBU organisations and their journalists have faced SLAPPs or threats of legal proceedings.

Sources may also be subject to threats and legal proceedings in relation to their involvement in the media's publications. While some of these lawsuits are still pending, others have been withdrawn or settled out of court due to the lack of financial resources to cover the legal proceedings.

6.1. Are you aware of the field of activity on which these targets are active?

- Yes
- No

Please specify

500 character(s) maximum

According to the information received, the threats of legal proceedings or SLAPPs usually target news or investigative programmes containing sensitive information.

One of our members reported that since the launch of its new investigation programme in 2017, they have recorded 175 civil and criminal proceedings representing € 115 million in alleged claims.

7. Who is the alleged perpetrator (applicant or claimant) in the SLAPP you know of?

- Public administration or state body
- Company
- Organisation (e.g. business association, political organisation)
- Politician
- Private person acting in his/her personal capacity
- Other – please specify
- I don't know/No reply

Please specify

500 character(s) maximum

In addition to pressure and lawsuits from large corporations and individuals with institutional or similar roles, our members have faced threats from organised crime as well.

8. Are you aware of cases in which no lawsuit(s) was/were filed but a journalist, rights defender or an organisation/body/institution was threatened with litigation or other action in order to intimidate them?

- Yes, legal threats without actual litigation, other parallel procedures
- Yes, other form of intimidation – please specify
- No

Please specify

500 character(s) maximum

In addition to legal threats without actual litigation and indirect threats to journalists' sources described in Q. 6, our members have reported frivolous complaints to competent authorities (e.g. police or judicial authorities) or blackmail to limit the reporting to certain non-sensitive topic.

9. What do you think are the consequences of SLAPP for the targets (defendants)?

- No consequences
- Targets are intimidated but can continue to do their work
- Targets are silenced and avoid engaging in debate on matters of public interest that could trigger SLAPP
- Targets stop engaging in debate on matters of public interest altogether
- I don't know/No reply

Please comment if needed

500 character(s) maximum

1. Detering effects on covering news and current affairs: Legal threats can lead to delays in publications and weaken their relevance. Impacts can be more serious, such as silencing journalists and their sources. Some sources no longer agree to provide information on certain issues.
2. Devastating effects: Legal costs to fight SLAPPs can be very high. SLAPPs or attempted SLAPPs cause a great deal of anxiety and may result in the journalist reconsidering their career path or editorial choices.

10. Do you think that the lack of EU-wide safeguards against SLAPP poses a problem to public participation?

- Yes, it is a serious problem
- Yes, it is a somewhat serious problem

- Yes, but not a serious problem
- No, it is not a problem
- I don't know/No reply

Please comment if needed

500 character(s) maximum

SLAPPs are a direct attack on fundamental rights, including freedom of expression and information. They undermine media pluralism and act as a strong deterrent to democratic processes. In a climate where journalists are increasingly threatened and physically attacked, SLAPPs add to the sense of insecurity of the profession. They can also endanger the sustainability of media organisations.

Yet, any measures to deter SLAPPs in the EU must not impede the fundamental right of access to justice.

11. What measures do you think would effectively curb the use of SLAPP in the EU?

- Legislation (e.g. procedural safeguards against SLAPP)
- Non-legislative measures (e.g. recommendations or guidelines or sharing best practices)
- A combination of legislation and non-legislative measures
- Financial support for bodies that specialise in supporting targets
- Other – please specify
- I don't know/No reply
- None of the above

Please specify

500 character(s) maximum

Both legislative and non-legislative measures are needed to address the issue of SLAPPs in the EU. While there is a need to create legal procedural safeguards, the EU should also allocate sufficient economic resources for SLAPPees' support organisations, invest in training and strengthen awareness raising and exchange of good practice.

12. What type of legislative measures do you think would make a real difference in this area?

- Civil procedural safeguards against SLAPP, such as early dismissal of a lawsuit and accelerated proceedings
- Legal aid to targets of SLAPP
- Third-party interventions and allowing representative organisations to act on behalf of targets of SLAPP

- Private international law rules (e.g. on jurisdiction and applicable law)
- Other – please specify
- I don't know/No reply
- None of the above

Please specify

500 character(s) maximum

The introduction of civil procedural safeguards seems to be an appropriate way to deal with SLAPP cases. We would, nevertheless, welcome further analysis to take a clearer position.

13. What assistance do you think targets (defendants) in SLAPP need?

- Information on SLAPP
- Information about legal professionals or other bodies/people that could help
- Legal assistance (e.g. pro-bono lawyers)
- Monitoring of SLAPP
- None of the above
- Other forms of assistance – please specify
- I don't know/No reply

14. Are you aware if, in your country, there are associations or other legal bodies offering assistance (e.g. information or legal assistance) to targets of SLAPP?

- Yes, there are. Please explain and provide examples
- No
- I don't know/No reply

14.1. Should there be such an association/body in every EU country?

- Yes
- No
- I don't know/No reply

15. Which of the following non-legislative measures do you think would help curb the use of SLAPP?

- Raising awareness of SLAPP
- Training legal professionals
- Sharing good practices among EU countries

- Sharing good practices among legal professionals
- Monitoring SLAPP in the EU
- None of the above – please explain
- Other – please explain

Please explain

500 character(s) maximum

In addition, it would be essential to carry out a thorough analysis of existing instruments at national and EU levels that may already provide protection against frivolous or bad faith legal proceedings. And consequently, properly inform legal professionals, as well as media organisations and their regulatory authorities. This would also be useful in relation to threats of legal proceedings.

16. To whom should awareness-raising activities be addressed?

- Citizens
- Journalists and human rights defenders
- Legal professionals
- None of the above
- Others – please specify

Please specify

500 character(s) maximum

Public institutions should also be made aware of the issue. This is of particular importance for public service media organisations.

17. What should training activities on SLAPP focus on?

Specify the main themes that the training should cover and who the target audience should be

500 character(s) maximum

Two types of training/awareness-raising seem essential to us:

- 1) Training of journalists to immediately report any kind of legal threats and harassment they face to their organisation and/or to the relevant (administrative) authority. Most journalists are often unaware that they are facing SLAPPs.
- 2) Training of legal professionals on existing instruments and safeguards at national level to circumvent judicial threats or gagging attempts.

Other

18. Please comment or give any additional information you would like to give on SLAPP.

The Commission would like to know your views on specific aspects of this initiative and/or references to relevant research.

5000 character(s) maximum

Both our Estonian and French members have reported cases of SLAPP on the CoE platform.

1) Lawsuit Against Estonian Public Broadcaster and Journalists Mihkel Kärmas and Anna Pihl (<https://fom.coe.int/alerte/detail/77647261;globalSearch=true>)

2) France 2 TV channel sued in a Commercial Court by the Bolloré Group (<https://fom.coe.int/alerte/detail/18507311;globalSearch=true>). The broadcast of this programme, which has since been awarded the Albert Londres Prize, was the subject of 3 procedures:

- A defamation complaint before the Tribunal de Grande Instance de Nanterre: France Télévisions (FTV) won the case in first instance, on appeal and in cassation. Significant procedural costs were incurred and witnesses from Cameroon were brought in.
- A writ of summons for denigration before the Paris Commercial Court with a request for damages of € 50 million. FTV won at first instance and on appeal. The claimant did not appeal to the Supreme Court.
- Citations for defamation of the FTV President, the journalist, and the presenter before the Douala Court in Cameroon. Defamation is punishable by one year's imprisonment in Cameroon. No plea hearing has yet taken place in Cameroon - 30 procedural hearings have taken place so far.

The cost of these procedures for FTV is very high and would not have been affordable for a freelance journalist.

In complement to our reply to question 9, we also wanted to highlight that, from our member's experience, it seems that SLAPP lawsuits can have different consequences on their targets, including the 3 following suggestions:

- Targets are intimidated but can continue to do their work;
- Targets are silenced and avoid engaging in debate on matters of public interest that could trigger SLAPP;
- Targets stop engaging in debate on matters of public interest altogether.

If you have any questions, send an email to JUST-A1-CIVIL-JUSTICE@ec.europa.eu, putting Public consultation on SLAPP in the subject line.

Contact

JUST-A1-CIVIL-JUSTICE@ec.europa.eu

