

**BELGIUM**  
**DRAFT LAW ('model law')**

**on protecting persons who engage in public participation from manifestly unfounded claims  
or abusive court proceedings**  
**('Strategic lawsuits against public participation' or SLAPPs)**

*Summary*

This 'model law' seeks to transpose the European Union's Anti-SLAPP Directive (hereinafter: Directive)<sup>1</sup> into Belgian federal law. It also contains a number of additional measures to implement recent Recommendations of both the European Commission of the European Union and the Committee of Ministers of the Council of Europe.

*Explanatory statement*

**GENERAL EXPLANATION**

*Introduction*

SLAPP stands for *Strategic Lawsuit Against Public Participation* and refers to the abuse of court proceedings to intimidate or silence 'public watchdogs' (journalists, academics, NGOs, human rights defenders, environmental organisations, citizens' initiatives, etc.). This is a worrying phenomenon since the aim of the 'slapper' is to stifle public debate, through the abuse of the judiciary. This phenomenon must be combated: as a member state of the Council of Europe, Belgium has also an obligation to ensure a safe and favourable environment for everyone to participate in the public debate without fear.<sup>2</sup>

SLAPPs usually involve (the threat of) civil lawsuits brought by wealthy or influential individuals or companies, alleging that a publication (of any kind: article, brochure, audiovisual programme, publication on social media or on a website, etc.) contains erroneous or defamatory content. Either they sue via court action to have that content removed or amended, or (and sometimes in combination) they claim substantial damages for reputational damage or damage to interests of a proprietary nature. Sometimes it also involves (threatening with) a complaint with civil action or a direct summons to the criminal court, for example for defamation or libel, stalking or violation of rules on personal data processing. The aim of such actions is to intimidate critical (investigative) journalism, NGO or citizens' initiative campaigns, or activists. For the claimants in these types of cases, it is not necessarily about winning the lawsuit, but rather to deter their critics through these SLAPPs by the prospect of high legal costs, protracted legal proceedings and/or the risk of being ordered to pay hefty damages. In some cases, the threat to file such a lawsuit, for example via a letter from a law firm, is sufficient to achieve the desired effect. An increase in SLAPPs has been observed not only in several European countries, but also in Belgium.<sup>3</sup>

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<sup>1</sup> Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024, 'on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')'.

<sup>2</sup> Recommendation CM/Rec(2024)2 of the Committee of Ministers (of 5 April 2024) 'to member States on countering the use of strategic lawsuits against public participation (SLAPPs)' (hereinafter: Recommendation CoM COE), recital 4. See also the case-law of the ECtHR: 'In particular, the positive obligations under Article 10 of the Convention require States to create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear' (ECtHR 29 January 2015, *Uzeyir Jafarov v. Azerbaijan*, no [54204/08](#), § 68 and ECtHR 14 September 2010, *Dink v. Turkey*, nos [2668/07](#), [6102/08](#), [30079/08](#), [7072/09](#) and [7124/09](#), § 137).

<sup>3</sup> See especially the reporting by CASE, the Coalition Against SLAPPs in Europe (<https://www.the-case.eu/resources/how-slapps-increasingly-threaten-democracy-in-europe-new-case-report/> and

To combat the SLAPP phenomenon, a number of initiatives have been taken on the international scene. The most important of these is the European Union's anti-SLAPP directive: Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 'on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')'. Next there are also the Recommendations of the European Commission of the European Union and the Committee of Ministers of the Council of Europe:

- 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')' (hereinafter: Recommendation EC);
- Recommendation CM/Rec(2024)2 of the Committee of Ministers (dated 5 April 2024) 'to member States on countering the use of strategic lawsuits against public participation (SLAPPs)' (hereinafter: Recommendation CoM COE).

The main purpose of this 'model law' is to initiate the process of transposing the Directive, while also taking into account the Recommendations of the Council of Europe and the European Commission, which have a broader scope than the Directive.

### *Overview of the Directive*

The Directive aims to remove obstacles to the proper functioning of civil proceedings while providing protection to natural and legal persons involved in public participation in matters of public interest, including journalists, publishers, media organisations, whistleblowers and human rights defenders, as well as civil society organisations, NGOs, trade unions, artists, researchers and scientists, against legal proceedings brought against them to prevent them from public participation (Directive, recital 6).

The Directive provides for various safeguards against manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation (Directive, Article 1).

Firstly, it should be ensured that a court in which **judicial proceedings** are brought **against natural or legal persons because of their involvement in public participation** may accept that associations, organisations, trade unions and other entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation, may support the defendant, where the defendant so approves, or provide information in those proceedings in accordance with national law (Directive, Article 9). At the same time, the judge before which legal proceedings are brought against natural or legal persons on account of their engagement in public participation, 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 damages (Directive, Article 10). Applications for such a security are treated in an accelerated manner, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial (Directive, Article 7(1)). The (only) condition for these two guarantees, i.e. third-party support and deposit of a security by the claimant is that they are due to the defendants' engagement in public participation.

Second, **manifestly unfounded claims against public participation** should be subject to early dismissal (Directive, Chapter III). The defendant may make an application to that effect, and the burden of proving that the claim is well founded rests on the claimant who brings the action. Applications for early dismissal of manifestly unfounded claims should be dealt with in an accelerated procedure (Directive, Article 7(1)). It is up to the claimant to substantiate the claim in order to enable the judge to assess whether it is not manifestly unfounded. The decision of an early dismissal must be a decision on the merits, and is subject to an appeal.

Thirdly, in cases of established **abuse of procedural law**, a number of sanctions and protections should be provided for, namely the order for the claimant to pay the costs (Directive, Article 14) and effective, proportionate and dissuasive

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<https://www.the-case.eu/latest/number-of-slapps-in-europe-continues-to-rise/>, the recent annual reports of the Safety of Journalists Platform at the Council of Europe (see <https://fom.coe.int/en/recherche;motCle=SLAPP> and <https://fom.coe.int/en/rapports>) and as far as Belgium is concerned [www.slapp.be](http://www.slapp.be).

penalties or other equally effective appropriate measures such as damages (Directive, Article 15), including the payment of the publication of the court decision, where provided for in national law, on the party who brought those proceedings.

A special protection is that Member States must ensure that, where abusive court proceedings against public participation have been brought by a claimant domiciled outside the European 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 (Directive, Article 17).

Fourthly, Member States must also 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 (Directive, Article 16).

The Directive aims at a minimum harmonisation within the European Union (Directive, recital 21) and leaves room for more favourable provisions to protect persons engaging in public participation against manifestly unfounded claims or abusive court proceedings, including national provisions that establish more effective procedural safeguards relating to the right to freedom of expression and information (Directive, Article 3(1)).

Member States have until 7 May 2026 to transpose the Directive (Directive, Article 22(1)).

### *Scope of the ‘model law’*

Unlike the Directive, the proposed regime is not limited to cases with cross-border implications. While it is true that the Directive - in line with European Union competence - obliges action against SLAPPs only if they have cross-border implications, limiting the protection to such cases would result in a difference in treatment that would be difficult to justify. Take the example of a cooperation for a Belgian newspaper between a Belgian and a Dutch journalist domiciled in Belgium, reporting on a Belgian topic that gives rise to a summons before a Belgian court: in such case the safeguards offered by the Directive would not apply, whereas they would if the cooperation had a cross-border implication, for example because the topic is Belgian-Dutch, because both a Dutch and a Belgian newspaper publish the article or because the Dutch journalist is domiciled in the Netherlands. Moreover, the European Commission urges that similar safeguards should also be provided for domestic litigation (Recommendation EC, no. 4). Furthermore, limiting the scope of the law to only cases with a cross-border character would result in the law having little impact in practice: research shows that over 90% of SLAPP cases do not have cross-border implications, but are situated in all their relevant aspects within one jurisdiction.<sup>4</sup> Only through a broad scope of application can the law help to effectively combat the SLAPP phenomenon.

In addition, unlike the Directive which focuses solely on civil cases, the ‘model law’ contains measures on criminal proceedings. Indeed, it is possible in Belgium to initiate SLAPPs by means of a direct summons before the criminal court or a complaint with civil charges before the investigating judge. Besides the effective abuse of procedural rights through criminal proceedings, the threat of criminal prosecution (e.g. for slander, insult, defamation, or stalking) also appears to have an intimidating or chilling effect on forms of public participation. Here too, the ‘model law’ follows the Recommendations of the European Commission and of the Committee of Ministers of the Council of Europe, all the more so because several SLAPPs through criminal proceedings have also been reported in Belgium in recent years.

### *How to recognise SLAPPs*

Article 4(3) of the Directive sets out how to identify SLAPPs. These are 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 (partially or totally) unfounded claims. Indications of such a purpose include for example:

- a) the disproportionate, excessive or unreasonable nature of the claim or part thereof, including the excessive dispute value;

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<sup>4</sup> See <https://www.the-case.eu/resources/how-slapps-increasingly-threaten-democracy-in-europe-new-case-report/> and <https://www.the-case.eu/latest/number-of-slapps-in-europe-continues-to-rise/>.

- b) the existence of multiple proceedings initiated by the claimant or associated parties in relation to similar matters;
- 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;
- 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.

The Recommendation CoM COE puts forward the following SLAPP indicators:

'8. SLAPPs manifest themselves in different ways and various indicators can be used to identify them. Such indicators include, but are not limited to, the following elements:

- 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;
- b. the arguments put forward by the claimant are partially or fully unfounded;
- c. the remedies requested by the claimant are disproportionate, excessive or unreasonable;
- d. the claims amount to abuse of laws or procedures;
- 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;
- f. the legal action deliberately targets individuals rather than the organisations responsible for the challenged action;
- 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;
- h. the claimant or their representatives engage in legal intimidation, harassment or threats, or have a history of doing so;
- 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;
- j. the claimant systematically refuses to engage with non-judicial mechanisms to resolve the claim.

9. While SLAPPs do not necessarily include all these indicators, the more of them that are present or the more acute the behaviour, the more likely the legal action can be considered as a SLAPP.'

## **EXPLANATORY NOTES TO THE ARTICLES**

### *Preliminary remark*

As stipulated in Article 4(1) of the Directive, in this 'model law' 'public participation' is to be understood as the making of any statement or activity by a natural or legal person in the exercise of the right to freedom of expression and information, freedom of the arts and sciences, or freedom of assembly and association, as well as any directly related preparatory, supporting or assisting activities, relating to a matter of public interest. A 'matter of public interest' includes all matters that affect the public in such a way that the public may be interested in them for legitimate reasons.

### *Chapter 1 - General provision*

This provision needs no explanation.

### *Chapter 2 - Transposition of Directive (EU) 2024/1069*

#### *Section 1*

This article indicates that this chapter aims to transpose the Directive into legislative provisions.

## Section 2

### *Article 3*

The 20° addition to Article 627 of the Judicial Code aims to designate the territorially competent court for claims for compensation for damages and costs incurred in connection with SLAPP-proceedings before a third-country court.

### *Article 4*

#### *Article 1385novies decies Judicial code*

The proposed Article 1385novies decies ensures that a claim against public participation that is manifestly unfounded can be dismissed at an early stage of the proceedings. If court proceedings were initiated with the main purpose of preventing, restricting or punishing public participation, they constitute an abuse of process against public participation and the judge may also impose the provided remedies or sanctions.

A claim is to be considered manifestly unfounded when it is unlikely to succeed and has characteristics of a SLAPP (Recommendation CoM COE, para. 27, with reference to para. 8).

As required by the Directive, appeal is always possible in case of early dismissal.

If, by interlocutory judgment, the judge finds that the claim is not manifestly unfounded, this is a preliminary assessment that does not prejudice the ultimate classification of the claim as a SLAPP. At the further hearing of the case, if the judge finds that the claim is a SLAPP, he may still impose the remedies and sanctions provided for.

#### *Article 1385vicies Judicial Code*

The proposed Article 1385vicies seeks to introduce the possibility of requiring the claimant to provide security at the defendant's request. The judgment ordering security shall determine the amount.

However, the security should not impede the claimant's effective access to justice. Although Article 6 ECHR already prevents the judge from ordering security in cases where access to justice would be obstructed, it is preferred to state this explicitly again for the sake of clarity. The judge will thus have to take into account, for example, the financial capacity of the claimant and/or the persons financing the claimant's action.

It should be noted that this measure of security will only be effective if the judge, in deciding on the amount for which security is to be provided, is not reluctant to estimate the costs and damages arising from the proceedings which the claimant may be ordered to pay.

#### *Article 1385vicies bis Judicial code*

The proposed Article 1385vicies bis allows associations, organisations, trade unions and other entities that have a legitimate interest in protecting or promoting the rights of persons engaged in public participation to act as *amicus curiae*. *Amici curiae* are not interveners but participate in the legal debate to bring their specific expertise (e.g. by providing information useful to the case) through which they contribute to the court's assessment with the aim of providing a more effective level of protection. This possibility is without prejudice to the application of the conditions and modalities for acting as an intervening party in litigation.

#### *Article 1385vicies ter Judicial Code*

The proposed Article 1385vicies ter implicitly deviates from article 780bis of the Judicial Code: in case of abusive court proceedings in cases brought against natural or legal persons because of their engagement in public participation, the specific provision of Article 1385vicies ter should be applied. The Directive requires effective, proportionate and dissuasive sanctions. Since SLAPPs often involve wealthy parties, the judge should have the possibility to impose fines of up to €25,000 because fines of up to €2,500 do not have sufficient impact.

The proposed Article 1385vicies bis allows the judge to impose damages of its own motion, as provided for in Article 6(2) of the Directive. Thus, even if no damages are claimed by the defendant, the judge may raise that matter and invite the parties to conclude on it and submit all useful documents, in particular on the amount of damages.

The possibility of imposing a sanction or damages for abuse of process does not end if the claims or pleadings are amended or withdrawn by the claimant in the course of the proceedings. Thus, to the extent that the judge finds that there is or was initially an abuse of procedural law, he can still impose sanctions or damages.

### Section 3

#### *Article 5*

This provision seeks to insert a new section in Article 25 § 1 of the Code of Private International Law to allow the refusal of recognition and enforcement of judgments given in third countries that qualify as SLAPPs.

Article 16 of the Directive imposes this obligation only when the proceedings in the third country were conducted against a natural or legal person resident or established in a EU Member State. It is proposed not to limit this ground for refusal to judgments against EU residents. Indeed, if the defendant is not an EU resident but owns property in Belgium, enforcement of the judgment could be sought before a Belgian judge. Protection should also apply in such a case in order to avoid unjustifiable unequal treatment.

The court before which an opposition is lodged against the recognition or enforcement of a judgment given in a third country will therefore have to determine whether or not the proceedings conducted in that third country constitute a SLAPP within the meaning of Belgian law.

Incidentally, decisions taken in other European Union Member States outside the application of Article 5 may also give rise to a refusal of recognition and enforcement of the decision given in that EU Member State, in application of European Union law (see, for example, the Real Madrid judgment of the Court of Justice: ECJ Grand Chamber 4 October 2024, ECLI:EU:2024:843).

#### *Article 6*

Article 6 (new Article 96*bis* of the Code of Private International Law) gives Belgian courts jurisdiction to hear claims for compensation for damage and costs suffered by a natural person domiciled or a legal person established in Belgium as a result of an action brought before a court in a country outside the European Union by a claimant residing or established outside the European Union and involving an abuse of procedural law within the meaning of Article 1385*vicies ter* of the Judicial Code or Article 524*undecies* of the Code of Criminal Procedure.

### Section 4

#### *Article 7*

This provision aims to entrust the Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH), which has been designated by the Federal Department of Justice as the central focal point in the fight against SLAPP in Belgium (see <https://federaalinstituutmensenrechten.be/en/slapp>) in the light of the Recommendation EC (nos. 25, 28 and 29) and the Recommendation CoM COE (para. 56 and 61), with the information and transparency tasks mentioned in Article 19(1) of the Directive. This concerns in particular information on available procedural guarantees and judicial remedies and on existing support measures such as legal aid and financial and psychological support, where available, as well as organisation of and participation in awareness-raising campaigns.

Article 19(2) of the Directive does not require transposition as legal aid in cross-border proceedings is granted under Articles 699*bis* and 699*ter* of the Judicial Code. Publishing the judgments referred to in Article 19(3) of the Directive is the responsibility of the judiciary.

Providing individual and independent support to victims (Recommendation EC, nos. 24 and 27; Recommendation CoM COE, para. 50) is also a task for FIRM/IFDH. This includes legal, financial, psychological, practical and informational support (Recommendation CoM COE, para. 51 to 54, and 56).

### Chapter 3 - Amendments to the Code of Criminal Procedure

This chapter seeks to introduce a similar protection regime in the Code of Criminal Procedure against SLAPPs initiated in the context of criminal proceedings.

Unlike the proposed Article 1385*novies* of the Judicial Code, the proposed Article 524*octies* of the Code of Criminal Procedure does not stipulate that a decision of early dismissal is subject to appeal. Indeed, this already follows from

Article 172(1) of the Code of Criminal Procedure for the police judge, and from Article 199 of the same Code for the correctional judge.

#### *Chapter 4 - Support and training*

##### *Article 9*

This provision charges the King (the Government) with developing training opportunities and support for awareness-raising initiatives to give effect to the recommendations under the numbers 10 to 14, and 19 to 23 of the Recommendation EC and under the paragraphs 55, 57 to 59 of the Recommendation CoM COE.

# *Draft law ('model law')*

## CHAPTER 1 - General provision

### First article

This Act regulates a matter referred to in Article 74 of the Constitution.

## CHAPTER 2 - Transposition of Directive (EU) 2024/1069

### Section 1 - Prior

#### Article 2

This chapter provides for the transposition of Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

### Section 2 - Amendments to the Judicial Code

#### Article 3

Article 627 of the Judicial Code shall be supplemented by a provision under 20° reading :

"20° the court of the domicile of the natural person or the place of establishment of the legal person, in the case of an action referred to in Article 1385*vicies ter*(4) of the Judicial Code or Article 524*undecies*(3) of the Code of Criminal Procedure for compensation for damages and costs suffered by a natural person domiciled or a legal person established in Belgium as a result of an action brought before a court in a country outside the European Union by a claimant residing or established outside the European Union on account of the defendant's engagement in public participation, while the action is an abuse of procedural law."

#### Article 4

In Part IV, Book IV of the Judicial Code, a chapter XXVII shall be inserted, reading:

"Chapter XXVII. - Prosecution of claims against natural or legal persons for their engagement in public participation

Art. 1385*novies decies*. If legal proceedings are brought against a natural or legal person on account of his or its engagement in public participation, that person may, no later than at the preliminary hearing, request the judge by reasoned request to dismiss the claim at an early stage because the claim is manifestly unfounded. The judge may also initiate such examination *ex officio*. The burden of proving that the claim is well founded rests on the claimant who brings the action. In that case, the claimant should be invited to substantiate the claim in order for the judge to assess whether or



not it is manifestly unfounded. The application for early dismissal shall be heard at the preliminary hearing or adjourned so that it may be argued at a nearby date.

Within 30 days of the hearing, the judge shall rule on the application for early dismissal. A judgment granting early dismissal is subject to an appeal.

Art. 1385*vicies*. If legal proceedings are brought against a natural or legal person on account of his or its engagement in public participation, the claimant, if the defendant claims it before any plea, shall be liable to depositing a security for the payment of costs and damages to which he may be ordered to pay.

The security should not impede effective access to justice.

Within 30 days of the request, the judge will rule on the matter.

The judgment ordering security shall determine the amount thereof. It may also replace the security by any other measure. The claimant is released from providing the security if he gives the specified sum on consignment, if he proves that his immovable property in Belgium is sufficient to recover that sum from it or if he gives a pledge in accordance with Article 2041 of the old Civil Code. In the course of the proceedings, the judge may, at the request of a party, change the amount of the sum or the nature of the security provided.

Art. 1385*vicies bis*. In legal proceedings against a natural or legal person on account of his or its engagement in public participation, the judge may allow associations, organisations, trade unions and other entities that have a legitimate interest in protecting or promoting the rights of persons engaging in public participation to support the defendant, with the defendant's consent, or to provide information.

Art. 1385*vicies ter*. In legal proceedings against a natural or legal person on account of his or its engagement in public participation, an abuse of procedural law occurs if the proceedings are not brought with a view to actually asserting or exercising a right, but have as their main purpose the prevention, restriction or punishment of public participation, and pursue unfounded claims.

The party who thus abuses procedural rights can be sentenced to a fine of between €500 and €25,000. The King may adjust the minimum and maximum amount every five years according to the cost of living. The fine is collected by the Administration of Registration and Domains using all means of justice. In addition to ordering the fine, the judge may also order that the judgment be published in full or by extract at the claimant's expense in the newspapers it designates or by any other means.

Moreover, the claimant may be ordered to pay damages, even *ex officio*. In that case, the same decision shall rule on that. Notwithstanding Article 1022(6) of the Judicial Code, damages shall include all attributable types of procedural costs, including the full costs incurred by the defendant for legal representation, unless such costs are excessive.

A claimant domiciled or established outside the European Union who brings an abusive action before a court in a country outside the European Union against a natural person domiciled or a legal person established in the European Union on account of his engagement in public participation may be ordered to pay damages and costs incurred by those persons in connection with the proceedings before that third-country court.

Subsequent amendments to the claims or pleadings by the claimant, including the withdrawal of the claim, do not affect the possibility of imposing sanctions or ordering compensation for damages.

Requests by the victims to sanction or award damages shall be dealt with by the judge under the procedure provided for short debates under Article 735 of the Judicial Code.

### Section 3 - Amendments to the Code of Private International Law

#### Article 5

Article 25 § 1 of the Code of Private International Law is supplemented by a provision under 10° reading:

"10° the judgment was rendered in a country outside the European Union and relates to the engagement in public participation of the person against whom recognition or enforcement is sought and there is an abuse of procedural law within the meaning of Article 1385 *vicies ter* of the Judicial Code or Article 524 *undecies* of the Code of Criminal Procedure."

#### Article 6

An article 96*bis* is inserted in the Code of Private International Law, reading:

"International competence on SLAPPs

Art. 96*bis*. The Belgian courts shall have jurisdiction to hear claims for compensation for the damage and costs suffered by a natural person domiciled or a legal person established in Belgium as a result of an action brought before a court in a country outside the European Union by a claimant residing or established outside the European Union on account that the action in the third-country was an abuse of procedural law within the meaning of Article 1385 *vicies ter* of the Judicial Code or Article 524 *undecies* of the Code of Criminal Procedure."

### Section 4 - Amendment to the Act of 12 May 2019 establishing a Federal Institute for the Protection and Promotion of Human Rights

#### Article 7

Article 5(1) of the Act of 12 May 2019 establishing a Federal Institute for the Protection and Promotion of Human Rights shall be supplemented by a provision under 10° reading:

"10° The Institute shall fulfil the tasks provided for in Article 19(1) of Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation').

In addition, the Institute supports victims of strategic litigation against public participation. In particular, this involves legal, financial, psychological, practical and technical support.

The Institute produces a biennial independent report on the protection of victims of SLAPP in Belgium, addressed to the government and federal parliament."

## CHAPTER 3 - Amendments to the Code of Criminal Procedure

### Article 8

In Book II, Title IV of the Code of Criminal Procedure, a Chapter X is inserted, reading:

"Chapter X. – Administration of justice in case of prosecution of natural or legal persons for their engagement in public participation

Art. 524*octies*. In case of a claim by a civil party against a natural or legal person on account of his or its engagement in public participation, that person may, no later than at the preliminary hearing, request the judge by reasoned request to dismiss the claim at an early stage because the claim is manifestly unfounded. The judge may also initiate such examination *ex officio*. The burden of proving that the claim is well founded rests on the claimant who brings the action. In that case, the claimant should be invited to substantiate the claim in order for the judge to assess whether or not it is manifestly unfounded. The application for early dismissal shall be heard at the preliminary hearing or adjourned so that it may be argued at a nearby date.

Within 30 days of the hearing, the judge will rule on the application for early dismissal.

Art. 524*novies*. If an action against a natural or legal person on account of his or its engagement in public participation emanates from the civil party, the claimant who brought the action shall, if the defendant claims it before any plea, be liable to depositing a security for the payment of costs and damages to which he may be ordered to pay.

The security should not impede effective access to justice.

Within 30 days of the request, the judge will rule on the matter.

The judgment ordering security shall determine the amount thereof. It may also replace the security by any other measure. The claimant is released from providing the security if he gives the specified sum on consignment, if he proves that his immovable property in Belgium is sufficient to recover that sum from it or if he gives a pledge in accordance with Article 2041 of the old Civil Code. In the course of the proceedings, the judge may, at the request of a party, change the amount of the sum or the nature of the security provided.

Art. 524*decies*. In cases brought against a natural or legal person for his or its engagement in public participation, the judge may allow associations, organisations, trade unions and other entities that have a legitimate interest in protecting or promoting the rights of persons involved in public participation to support the defendant, with the defendant's consent, or provide information.

Art. 524*undecies*. In cases of abuse of procedural law by a civil party in cases against natural or legal persons because of their engagement in public participation, the judge may sentence that party to a fine of between €500 and €25,000. The King may adjust the minimum and maximum amount every five years according to the cost of living. To be considered an abuse of procedural law directed against public participation are claims that are not brought with a view to actually asserting or exercising a right, but which have as their main purpose the prevention, restriction or punishment of public participation, and which pursue unfounded claims. In addition to sentencing to the fine, the judge may also order that the judgment be published in full or by extract at the civil party's expense in such newspapers as it may designate or by any other means.

In addition, the civil party may be ordered to pay damages, even ex officio. Damages include all awardable types of legal costs, including the full costs incurred by the defendant for legal representation, unless those costs are excessive.

A claimant domiciled or established outside the European Union who brings an action before a court in a country outside the European Union against a natural person domiciled or a legal person established in the European Union for his or its engagement in public participation, committing an abuse of procedural law, may be ordered to pay damages and costs incurred by those persons in connection with the proceedings before that court.

Subsequent amendments to the claims or pleadings by the civil party, including the waiver of the civil action, do not affect the possibility of imposing sanctions or ordering compensation for damages.

The judge shall rule within a maximum of three months on defendants' requests for sanctioning or awarding compensation.

Art. 524*duodecies*. A judicial decision in a country outside the European Union on account of the engagement in public participation of the person against whom recognition or enforcement is sought shall not be recognised or declared enforceable if there is an abuse of procedural law within the meaning of Article 524*undecies*."

#### CHAPTER 4 - Support and training

##### Article 9

The King is directed to provide within one year of the entry into force of this law:

1° for supporting initiatives aimed at raising awareness and organising information campaigns on manifestly unfounded claims or abusive court proceedings against public participation;

2° for training opportunities related to manifestly unfounded claims or abusive court proceedings against public participation.

## CORRELATION TABLE DIRECTIVE – DRAFT

Directive (EU) 2024/1069	Articles of the draft law transposing Directive (EU) 2024/1069	Comments
Art. 1 - Subject matter	-	Needs no transposition.
Art. 2 - Scope	-	Needs no transposition. The insertion of the new provisions in the Judicial Code makes them applicable to civil and commercial cases.
Art. 3 - Minimum requirements	-	Needs no transposition.
Art. 4(1) and (2) - Definitions of 'public participation' and 'matter of public interest'	-	Need no transposition. However, the definitions are included in the explanatory notes.
Art. 4(3) - Definition of 'abuse of procedural right directed against public participation'	Art. 4 art. 1385 <i>vicies ter</i> , paragraph 1 Judicial Code	Possible indications of SLAPPs are included in the explanatory statement and notes.
Art. 5(1) - Definition of 'Matters having cross-border implications'	-	Needs no transposition because the new provisions are not limited to cross-border cases in view of the equal treatment.
Art. 5(2) - The domicile (or place of establishment) shall be determined in accordance with Regulation (EU) No 1215/2012	-	Needs no transposition because the Regulation already applies by itself.
Art. 6(1)(a) - Defendants may request security deposit	Art. 4 art. 1385 <i>vicies</i> Judicial Code	
Art. 6(1)(b) - Defendants can request for early dismissal	Art. 4 art. 1385 <i>novies decies</i> Judicial Code	
Art. 6(1)(c) - Defendants may apply for remedies and sanction in case of abuse of procedural rights	Art. 4 art. 1385 <i>vicies ter</i> Judicial Code	
Art. 6(2) - Measures on procedural safeguards may be taken ex officio if necessary	Art. 4 art. 1385 <i>novies decies</i> , paragraph 1 and art. 1385 <i>vicies ter</i> , paragraphs 2 and 3 Judicial Code	
Art. 7(1) - Expedited treatment for deposit of security	Art. 4 art. 1385 <i>vicies</i> , paragraph 3 Judicial Code	
Art. 7(1) - Accelerated	Art. 4	

procedure for early dismissal	art. 1385 <i>novies decies</i> , paragraph 2 Judicial Code	
Art. 7(2) - Accelerated proceedings on remedies or sanctions in cases of abuse of procedural rights	Art. 4 art. 1385 <i>vicies ter</i> , paragraph 6 Judicial Code	
Art. 8 - Subsequent amendments to the claim or pleadings	Art. 4 art. 1385 <i>vicies ter</i> , paragraph 5 Judicial Code	
Art. 9 - Support for the defendant in legal proceedings	Art. 4 art. 1385 <i>vicies bis</i> Judicial Code	
Art. 10 - Security	Art. 4 art. 1385 <i>vicies</i> Judicial Code	
Art. 11 - Early dismissal of manifestly unfounded claims	Art. 4 art. 1385 <i>novies decies</i> Judicial Code	
Art. 12(1) - Burden of proof and substantiation of manifestly unfounded claims	Art. 4 art. 1385 <i>novies decies</i> , paragraph 1 Judicial Code	
Art. 13 - Appeals against early dismissal decisions	Art. 4 art. 1385 <i>novies decies</i> , paragraph 2 Judicial Code	
Art. 14 - Order to pay all legal costs	Art. 4 art. 1385 <i>vicies ter</i> , third paragraph Judicial Code	
Art. 15 - Sanctions or other equally effective appropriate measures	Art. 4, art. 1385 <i>vicies ter</i> , paragraphs 2 and 3 Judicial Code	
Art. 16 - Grounds for refusing recognition and enforcement of judgments given in third countries	Art. 5 art. 25, §1, 10° Code of Private International Law	
Art. 17 - Jurisdiction over claims relating to proceedings in third countries	Art. 3 art. 627, 20° Judicial Code art. 4, art. 1385 <i>vicies ter</i> , paragraph 4 Judicial Code, and art. 6 art. 96 <i>bis</i> Code of Private International Law	
Art. 18	-	Needs no transposition.
Art. 19(1)	Art. 7	
Art. 19(2)	-	Needs no transposition because it is already provided for by art. 699 <i>bis</i> and 699 <i>ter</i> of the

		Judicial Code.
Art. 19(3), 20 and 21	-	Need no transposition

## CORRELATION TABLE DRAFT – DIRECTIVE

Articles of the draft law transposing Directive (EU) 2024/1069	Directive (EU) 2024/1069	Comments
Art. 2	Art. 22(1), paragraph 2	
Art. 3 Art. 627, 20° Judicial Code	Art. 17(1)	
Art. 4 Art. 1385 <i>novies decies</i> Judicial Code	Art. 6(1)(b) and (2), 7(1) and 11 to 13	
Art. 4 Art. 1385 <i>vicies</i> Judicial Code	Art. 6(1)(a), 7(1) and 10	
Art. 4 Art. 1385 <i>vicies bis</i> Judicial Code	Art. 9	
Art. 4 Art. 1385 <i>vicies ter</i> Judicial Code	Art. 4(3), 6(1)(c) and (2), 7(2), 8, 14, 15 and 17(1)	
Art. 5	Art. 16	
Art. 6	Art. 17(1)	
Art. 7	Art. 19(1)	
Art. 8	-	No transposition of the Directive.
Art. 9	-	No transposition of the Directive.