



DAPHNE  
CARUANA  
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FOUNDATION

Prime Minister Robert Abela  
Minister for Justice and Reform of the Construction Sector Jonathan Attard

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2nd August 2024

Dear Prime Minister,  
Dear Minister,

**Re: Legal Notice 177 of 2024 Strategic Lawsuits Against Public Participation Order**

Malta's summary transposition of the EU anti-SLAPP Directive known as Daphne's Law (the "Directive"), enacted by Legal Notice rather than by Parliament, would have been welcome had it fulfilled the purpose of providing comprehensive protection against abusive litigation. Ironically, in its haste for Malta to be the first Member State to transpose the Directive, the country that inspired the creation of Daphne's Law has missed the opportunity to provide comprehensive protection and to set a positive example for other countries. We set out below our preliminary observations on Malta's national anti-SLAPP legislation (the "anti-SLAPP legislation") and reserve the right to comment further at a later date.

The Directive itself states that it lays down *minimum standards* for Member States, enabling them to adopt or maintain provisions that establish effective safeguards against abusive litigation. We are disappointed that the government has chosen to limit the anti-SLAPP legislation to those minimum requirements, covering only SLAPP cases with cross-border implications.

The transposition of the Directive was to be guided by the Recommendation adopted by the European Commission on 27th April 2022 (the "EU Recommendation") and by the Recommendation adopted by the Council of Ministers on 5th April 2024 (the "CoE Recommendation"). Both instruments complement the Directive's standards, providing the detail needed for national anti-SLAPP laws across the European Union to afford meaningful protection - including safeguards against *domestic* SLAPP cases similar to those laid out in the Directive covering cases with cross-border implications.

The anti-SLAPP legislation lacks critical safeguards against domestic SLAPP cases. Defendants in Malta in cases which lack a cross-border element would therefore not be protected. This lacuna is significant, given the frequent abuse of the law that has earned Malta the dubious honour of being the country with the highest number of cases of SLAPPs

per capita in the European Union - 8 per 100,000 in 2021, 19.93 per 100,000 in 2023.<sup>1</sup> We are therefore not encouraged by the government's eagerness to "participate and assist other countries" in transposing the Directive, as this critical omission from Europe's first national anti-SLAPP legislation sets a negative precedent for the rest of Europe.

Article 2 of the anti-SLAPP legislation repurposes the indicative qualities stated in paragraph 4(3) of the Directive (i.e. the indications of purpose) as being examples of claims which may be unfounded. The reason for the repurposing is opaque to us but its impact on anti-SLAPP protection is clear. At best, this section of the anti-SLAPP legislation is confusing. At worst, it could be interpreted as stating the preconditions of early dismissal, rather than the features that allow the court to infer the purpose of the plaintiff (a notoriously difficult task for the court, which is why these features are important for meaningful protection).

Article 15 of the Directive requires penalties for plaintiffs to be effective, proportionate, and dissuasive. We therefore do not understand the reason for capping the maximum penalty that may be imposed on a plaintiff at 10,000 Euros, given that this would not be dissuasive to a large corporation or wealthy individual.

The EU Recommendation provides that Member States' anti-SLAPP measures should include "raising awareness and developing expertise, in particular among legal professionals and the targets of manifestly unfounded or abusive court proceedings against public participation, to ensure that support is available for those targeted by such proceedings and to support enhanced monitoring." Moreover, the CoE Recommendation provides that "governments of the Member States are recommended to further strengthen existing ... policy frameworks to counter SLAPPs, in particular regarding structural and procedural safeguards, remedies, transparency, support for targets and victims, and development of education, training, awareness raising programmes." To our knowledge, the government has not announced any such measures, leaving a significant gap in the system of anti-SLAPP protection.

Malta is still in time to address the shortcomings we outline here and others that may yet be identified. We look forward to your positive confirmation that the promised and much-delayed White Paper on reforms will include proposals for amendments to the anti-SLAPP legislation, and other measures to ensure that Malta's anti-SLAPP regime provides meaningful and comprehensive protection against abusive litigation in both cross-border and domestic cases.

Yours sincerely,

aditus, Repubblica, The Daphne Caruana Galizia Foundation

#### **References**

[Directive \(EU\) 2024/1069 of the European Parliament and of the Council](#)  
[Commission Recommendation \(EU\) 2022/758](#)  
[Recommendation CM/Rec\(2024\)2 of the Committee of Ministers to member States](#)  
[Press release PR241279en by the Ministry of Justice](#)  
[Legal Notice 177 of 2024](#)

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<sup>1</sup><https://www.the-case.eu/latest/how-slapps-increasingly-threaten-democracy-in-europe-new-case-report/>