



Analysis of concordance of the Moldovan legislation with the **EU Anti-SLAPP Directive**

This product was carried out as part of a project aimed at supporting efforts to transpose the EU acquis, implemented by the Legal Resources Centre from Moldova with the support of the Soros Foundation Moldova.

Analysis of concordance of the Moldovan legislation with the EU Anti-SLAPP Directive

Summary:

- While the Law on Freedom of Expression provides special procedural guarantees protecting public participation through public dissemination of information, they are not sufficient to ensure effective prevention and protection against strategic lawsuits against public participation;
- The main issues requiring legislative intervention include, but are not limited to: a) introducing procedure and criteria for determining by the court the 'abusive court proceedings against public participation'; b) ensuring possibility of early dismissal of manifestly unfounded claims against public participation; c) providing additional safeguards for the plaintiffs (e.g. right to request security from the claimant); d) ensuring effective right to intervention of the organisations protecting freedom of expression in judicial proceedings; e) introducing sanctions for the claimants initiating abusive court proceedings against public participation.
- Implementation of the necessary changes requires particularly revision of the Law on Freedom of Expression, as well as possible amendments to the Code of Civil Procedure.

Concordance table:

Title of 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')

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
1	This Directive provides 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.	N/A*				

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
2	This Directive shall apply to matters of a civil or commercial nature with cross-border implications brought in civil proceedings, including procedures for interim and precautionary measures and counteractions, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the state for acts and omissions in the exercise of state authority (acta iure imperii). This Directive shall not apply to criminal matters or arbitration and shall be without prejudice to criminal procedural law.	N/A				
3.1	1. Member States may introduce or maintain provisions that are more favourable to protect persons engaged in public participation against manifestly unfounded claims or abusive court proceedings against public participation in civil matters, including national provisions that establish more effective procedural safeguards relating to the right to freedom of expression and information.	N/A				
3.2	2. The implementation of this Directive shall in no circumstances constitute grounds for a reduction in the level of safeguards already afforded by Member States in the matters covered by this Directive.	N/A				

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
4(1)	<p>For the purposes of this Directive, the following definitions apply:</p> <p>'public participation' means the making of any statement or the carrying out of any 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, and any preparatory, supporting or assisting action directly linked thereto, and which concerns a matter of public interest;</p>	Law no. 64/2010 on Freedom of Expression	3(1)	(1) Everyone has the right to freedom of expression. This right includes freedom to seek, receive and impart information and ideas.	Full	Definiția expresiei în legislația moldovenească corespunde în mare măsură noțiunii de participare publică din Directivă.
4(2)	<p>'matter of public interest' means any matter which affects the public to such an extent that the public may legitimately take an interest in it, in areas such as:</p> <p>(a) fundamental rights, public health, safety, the environment or the climate;</p> <p>(b) activities of a natural or legal person that is a public figure in the public or private sector;</p> <p>(c) matters under consideration by a legislative, executive, or judicial body, or any other official proceedings;</p> <p>(d) allegations of corruption, fraud, or of any other criminal offence, or of administrative offences in relation to such matters;</p> <p>(e) activities aimed at protecting the values enshrined in Article 2 of the Treaty on European Union, including the protection of democratic processes against undue interference, in particular by fighting disinformation;</p>	Law no. 64/2010 on Freedom of Expression	2	public interest – interest of society (and not the simple curiosity of individuals) in events related to the exercise of public power in a democratic state or in other issues that normally arouse the interest of society or a part of it;	Full	The definition of public interest under the Law on Freedom of Expression generally corresponds and might be considered even wider than the definition in the Directive.

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
4(3)	<p>'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. Indications of such a purpose include for example:</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>				No concordance	The concept of abusive court proceedings against public participation is not recognized in the Moldovan legislation. It is recommended to introduce it with regard to defamation claims, processed by the courts according to the Law on Freedom of Expression and the Code of Civil Procedure. In particular, the court should be provided with list of criteria from this provision of the Directive, enabling it to assess and determine the nature of the claim. This determination should be done at the initial phase of the proceedings, at the request of the defendant or ex officio.
5.1	For the purposes of this Directive, a matter is considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised and all other elements relevant to the situation concerned are located only in that Member State.	N/A				
5.2	Domicile shall be determined in accordance with Regulation (EU) No 1215/2012.	N/A				

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
6.1	<p>Member States shall ensure that where court proceedings are brought against natural or legal persons on account of their engagement in public participation, those persons can apply, in accordance with national law, for:</p> <p>(a) security as provided for in Article 10;</p> <p>(b) early dismissal of manifestly unfounded claims as provided for in Chapter III;</p> <p>(c) remedies against abusive court proceedings against public participation as provided for in Chapter IV.</p>				No concordance	None of the special mechanisms for protection of natural or legal persons on account of their engagement in public participation are secured by the Moldovan legislation. Detailed comments are recommendations relating to each mechanism are provided in the sections below.
6.2	Member States may provide that measures on procedural safeguards as provided for in Chapters III and IV can be taken ex officio by the court or tribunal seised of the matter.				No concordance	As above
7.1	Member States shall ensure that applications in accordance with Article 6(1) points (a) and (b) are treated in an accelerated manner in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.				No concordance	There are no guarantees in the Moldovan legislation for accelerated provision of the special protective measures listed in the Article 6.1 of the Directive.
7.2	Member States shall ensure that applications in accordance with Article 6(1) point (c) may also be treated in an accelerated manner, where possible, in accordance with national law, taking into account the circumstances of the case, the right to an effective remedy and the right to a fair trial.				No concordance	As above.

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
8	<p>Member States shall ensure that in court proceedings brought against natural or legal persons on account of their engagement in public participation any subsequent amendments to the claims or the pleadings made by the claimant, including the withdrawal of claims, do not affect the possibility for the defendant to apply for remedies as provided for in Chapter IV, in accordance with national law.</p> <p>The first paragraph is without prejudice to Article 6(2).</p>				No concordance	Considering absence of the special remedies against abusive court proceedings against public participation under Moldovan legislation, this provision is not relevant in the current legislative framework.
9	<p>Member States shall ensure that a court or tribunal seised of court proceedings brought against natural or legal persons on account of their engagement 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.</p>				No concordance	Under the Code of Civil Procedure, there is a possibility for accessory intervention in the case (Article 67) that could be theoretically used by the organisations promoting the public participation. However, the accessory intervener has to prove that the resolution of the case could influence his/her rights or obligations towards one of the parties. This criterion will not be met in most of the cases regulated by this provision of the directive. It is therefore recommended to extend the right of intervention to any organisations demonstrating a legitimate interest in safeguarding or promoting the rights of persons engaging in public participation.

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
10	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.				No concordance	<p>There is no provision in the Moldovan regulating the possibility to impose on the claimant the requirement of providing security, in case of court proceedings brought against natural or legal persons on account of their engagement in public participation.</p> <p>This issue should be regulated in the following manner:</p> <ul style="list-style-type: none"> a) the obligation to depose a security might be imposed by the court ex officio or upon request of the defendant; b) security should be determined by the court in the amount of prognosed costs of the proceedings incurred by the defendant, covering particularly court fees and costs of legal representation; c) the security should not impede effective access to justice.

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
11	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.				No concordance	<p>There is no procedure for early dismissal of manifestly unfounded claims against public participation.</p> <p>It is recommended to introduce reasonable deadline for the court for considering the defendant's motion to determine the claim as manifestly unfounded. This deadline should be considerably shorter than the expected disposition time for this type of cases, e.g. up to 3 months, though the solutions relating to this issue differ among EU Member</p>
12.1	The burden of proving that the claim is well founded rests on the claimant who brings the action.				No concordance	If the defendant requested early dismissal of the claim, it should be explicitly stipulated that the burden of proving that the claim is well founded rests on the claimant.

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
12.2	Member States shall ensure that where a defendant has applied for early dismissal, it shall be for the claimant to substantiate the claim in order to enable the court to assess whether it is not manifestly unfounded.				No concordance	It needs to be explicitly regulated that the court should request the claimant to present his/her position on the request for early dismissal of the case, in order to prove that the his/her action was well founded.
13	Member States shall ensure that a decision granting early dismissal pursuant to Article 11 is subject to an appeal.				No concordance	The decision solving the case by early dismissal of the claim should be subject to regular appeal procedure.

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
14.1	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.	Code of Civil Procedure	94(1)	(1) The court shall oblige the party that lost the case to pay, at the request of the party that won the case, the court costs. If the plaintiff's action was partially admitted, the plaintiff shall be compensated for the court costs in proportion to the admitted part of the claims, and the defendant - in proportion to the rejected part of the plaintiff's claims.	Partial concordance	<p>The provisions of the Code of Civil Procedure generally ensure compensation of court costs of the winning party, including the court fees, but also costs of legal representation. However, the provisions regulating reimbursement of the costs of legal representation do not explicitly guarantee full compensation. The court enjoys discretion in setting the exact amount of compensation, to the extent "that they were real, necessary and reasonable". While this provision enables providing full compensation, it does not guarantee it.</p> <p>It is recommended to consider special provision dedicated to the compensation of costs of legal representation. It might be formulated as follows:</p>

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
			96(1)	(1) The court shall oblige the party that lost the case to compensate the winning party for its legal assistance expenses, to the extent that they were real, necessary and reasonable.	Partial concordance	"When courts dismisses the action, determining abusive court proceedings against public participation, it shall grant the defendant, upon his/her motion, the compensation of full costs of legal representation, unless they were manifestly excessive".
14.2	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.				No concordance	No provisions were identified in the Moldovan legislation, guaranteeing the full reimbursement of the costs incurred by the defendant, in particular the costs of the legal representation.

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
15	Member States shall ensure that courts or tribunals seised 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.				No concordance	<p>No provisions were identified in the Moldovan legislation, ensuring adequate sanctions on claimant initiating abusive court proceedings against public participation.</p> <p>It is recommended to introduce relevant mechanism enabling the court to undertake one of the following decisions, when solving the case:</p> <ul style="list-style-type: none"> a) imposing fine on the claimant. The law should specify the limits of this fine, striking balance between ensuring its preventive effect and maintaining principle of proportionality; b) imposing the obligation on the plaintiff to ensure publication of the court decision solving the case in a manner specified by the court and at the expense of the claimant. This may include particularly publication of the decision in the press or other widely available media.

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
16	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.				No concordance	The provisions of the Code of Civil Procedure regulating recognition and enforcement of foreign court decisions, especially the grounds for refusing recognition (Article 471 of the Code of Civil Procedure) do not explicitly provide for preventing recognition and execution of the decisions resulting from abusive court proceedings against public participation.
17.1	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.				No concordance	No provisions were identified in the Code of Civil Procedure enabling the person domiciled in the Republic of Moldova to seek compensation of damage and costs relating to abusive court proceedings against public participation, before the Moldovan court.
17.2	Member States may limit the exercise of jurisdiction under paragraph 1 while proceedings are still pending in the third-country.				No concordance	As above.
18	This Directive shall not affect the application of bilateral and multilateral conventions and agreements between a third State and the Union or a Member State concluded before 6 May 2024.	N/A				

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
19.1	<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>The information referred to in the first subparagraph shall include any available information on awareness-raising campaigns, where appropriate in cooperation with relevant civil society organisations and other stakeholders.</p> <p>Such information shall be provided in one single place in an easily accessible format via an appropriate channel, such as an information centre, an existing focal point or an electronic gateway, including the European e-Justice Portal.</p>				No concordance	<p>There is no clear obligation imposed on any authority to conduct the relevant awareness-raising actions. It should be considered to allocate responsibility for conducting information campaigns to one of the currently existing bodies. This could be, in particular, the Ombudsman institution or the Audiovisual Council.</p> <p>For example, in Belgium all tasks relating to disseminating information and raising public awareness are assigned to the ombuds institution, according to the draft law transposing the Directive.</p>
19.2	Member States shall ensure that legal aid in cross-border civil proceedings is provided in accordance with Council Directive 2003/8/EC (7).				No concordance	The Law No 198/2007 regarding state-guaranteed legal aid does not ensure provision of legal aid in the proceedings conducted before the foreign courts.

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
19.3	Member States shall publish in an easily accessible and electronic format any final judgment delivered by their national courts of appeal or of the highest instance in relation to proceedings falling within the scope of this Directive. That publication shall be carried out in accordance with national law.	Law no. 514 of 6 July 1995 on judicial organization	10(4)	The decisions of the courts of first instance, the courts of appeal and the Supreme Court of Justice shall be published on the internet webpage.	Full	This obligation is fulfilled via https://instante.justice.md/ portal, yet it could be considered to improve the searching functionality of this portal in order to enable easy identification of the court proceedings brought against natural or legal persons on account of their engagement in public participation.
20	Member States shall, on an annual basis and where available, submit data on the applications and on decisions referred to in Chapters II, III, IV and V to the Commission, preferably in an aggregated form, with regard to: (a) the number of abusive court proceedings against public participation cases, initiated in the relevant year; (b) the number of court proceedings, classified by type of defendant and of claimant; (c) the type of claim submitted on the basis of this Directive.	N/A				
21	Member States shall, by 7 May 2030, provide the Commission with the available data regarding the application of this Directive, in particular available data showing how those targeted by court proceedings against public participation have used the safeguards provided for in this Directive. On the basis of the information provided, the Commission shall by 7 May 2031 and every five years thereafter at the latest, submit to the European Parliament and to the Council a report on the application of this Directive.	N/A				

EU Directive		Relevant Moldovan legislation				
Article	Text block	Legislation	Article	Text block	Concordance status	Remarks
	That report shall provide an assessment of developments with regard to abusive court proceedings against public participation and the impact of this Directive in the Member States while taking into account the national context in each Member State, including the implementation of Recommendation (EU) 2022/758. If necessary, that report shall be accompanied by proposals to amend this Directive. The Commission report shall be made public.					
22.1	Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 7 May 2026. They shall immediately inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.	N/A				
22.2	Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.					
23	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.					
24	This Directive is addressed to the Member States.					

* N/A – the relevant does not need transposition or the provision does not apply to Republic of Moldova, considering that it is not a Member State.