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Ms Věra Jourová
Vice President for Values and Transparency
European Commission

Copy to: Mr Didier Reynders, Commissioner for Justice, European Commission

By electronic mail

29 April 2021

Re: Eni's abuse of SLAPPs, the latest example of fossil fuel companies' legal intimidation tactics

Dear Vice-President,

We are writing to highlight the need for the upcoming European Commission's initiative on SLAPPs to include a legislative proposal for an anti-SLAPP Directive that will protect all watchdogs from SLAPPs and legal intimidation tactics, currently used extensively by fossil fuel companies in Europe. On this occasion, we would like to draw your attention to the use of SLAPPs by the partly government-owned Italian oil company Eni Spa ("Eni"), who is suing the Italian paper *Il Fatto Quotidiano* for 29 articles on the company's activities.

As noted in the 2020 study commissioned by the European Commission, [Ad-Hoc Request on SLAPPs in the EU](#), "SLAPPs are increasingly used across member states, in an environment that is getting more and more hostile towards journalists, human rights defenders, and various NGOs". SLAPPs operate primarily through the litigation process, which is designed to be as painful as possible for the target. Given the imbalance of power that is often embedded in such disputes, the very prospect of a drawn out lawsuit can be enough to silence whistleblowers and critics. Legal threats are often therefore used on their own to intimidate and harass public watchdogs.

The recent lawsuit filed by Eni against the newspaper *Il Fatto Quotidiano* is a case in point. The company filed a defamation lawsuit in response to 29 articles - as well as enquiries, political reports, speeches, comments and even court records and calendars - about the company, demanding that the newspaper remove all articles about Eni from its website. All this, the company claims, constitutes a ["denigrating and defamatory campaign" of "political propaganda"](#).

Such efforts to discredit and vilify public interest reporting - most of which here concerned a trial for international corruption in Nigeria that was recently concluded in Milan - are a tactic commonly used by SLAPP litigants to intimidate the target and provide cover for the attack. Likewise, excessive damages - such as the €350,000 sought from *Il Fatto* by Eni - are often

demanded by SLAPP litigants as a means of intimidating the defendants and discouraging further efforts to pursue accountability.

In many cases, the abusive nature of the lawsuit is discernible from the fact that it fits a broader pattern of legal intimidation. Eni has a history of filing lawsuits and issuing legal threats against its critics, particularly in relation to corruption. Some examples are as follows (this is a non-exhaustive list):

- In 2019, [Eni's CEO Claudio Descalzi sued a former legal advisor](#) Piero Amara after excerpts of the lawyer's written testimony relating to its Nigerian corruption case were published in several newspapers. [Amara](#) pleaded guilty on corruption of prosecutors and judges in Siracusa and Rome, at the advantage of several companies, including Eni, and mentioned his effort on behalf of the company to tamper a key witness in the OPL245 trial in Milan Court;
- Also in 2019, Eni sued the Italian journalist Claudio Gatti for defamation allegedly carried out against the company by publishing the book "Enigate" on the OPL245 corruption case. Eni [claims damages for at least 5 million euro](#) and the book to be withdrawn from the market.
- [Eni sued witness Vincenzo Armanna](#), former Eni manager and OPL245 project leader in Nigeria, who confirmed Amara's allegations in a Milan Court in July 2019.
- In 2012 Eni sued the [Italian national public broadcaster RAI and its program "Report"](#) for investigating the management of the company by some of its staff. Eni withdrew its lawsuit after three years. However in 2019 after RAI/Report broadcasted their investigation, including interviews of Amara and Armanna, got sued for defamation with a claim of damages amounting to 5 million euro.

Eni's use of SLAPPs is, however, symptomatic of a broader problem in Europe. SLAPPs and other legal intimidation tactics are on the rise across the continent, as has been documented in reports published by [Greenpeace EU](#) and [Index on Censorship](#).

Fossil fuel companies have proven to be particularly enthusiastic practitioners of such tactics. One of the most notoriously aggressive SLAPP litigants in recent years, for example, is the German multinational energy company RWE. In recent years it has filed a [50,000 Euro](#) defamation lawsuit against a young climate activist simply for calling for acts of civil disobedience on Twitter, as well as a [2 million Euro](#) lawsuit against climate activists - as well as an accompanying journalist - for blockading a coal power station.

Another example is the oil company Chevron, which [filed criminal and civil lawsuits against anti-gas protesters in a small town in Poland](#) in response to the establishment of a protest camp in a proposed shale drilling site. Chevron's most egregious efforts to block accountability using civil lawsuits, however, are to be found not in Europe but in the USA, where it gained notoriety for its use of the [anti-racketeering law RICO](#) to block accountability for oil dumping.

The growing use of SLAPPs by fossil fuel companies in Europe is just part of a broader global trend: the use of SLAPPs as a business tactic was neatly illustrated by a [strategy document](#)

drawn up by mining company Adani's legal team, and leaked to ABC in February 2019. The document recommended using the legal system to bankrupt poorly resourced opponents, silence political commentators, and put pressure on governments. In a section called "Play the Man", it recommended "*where activists and commentators spread untruths, use the legal system to silence them*".

As the examples above illustrate, SLAPPs are a threat to public participation, democracy, and the rule of law, and a direct attack on fundamental rights such as the right to freedom of expression, information, and assembly. SLAPPs have a chilling effect and prevent the disclosure of public interest information through the fear of further legal attacks. They also threaten access to justice and judicial cooperation across the Union, as well as the enforcement of EU law - including EU environmental legislation, EU rules on public procurement and EU labour laws.

The EU can and must end SLAPPs. We welcome the Commission's commitment to reform Brussels I and Rome II to avoid forum shopping and the race to the bottom of applicable law, and the Commission's intention to come up with an initiative on SLAPPs by the end of this year, with the support of a newly established group of experts.

Il Fatto, just like in the other cases we have highlighted, will only be able to continue operating in freedom if there is an anti-SLAPP directive in place. Given the absence of adequate safeguards at national level, an EU directive providing for common minimum rules in all Member States - such as the early dismissal of these abusive lawsuits - is the only legal avenue that can offer SLAPP targets the procedural tools needed to adequately redress the current imbalance of resources and power and stop the abuse of the courts.

With this letter we want to echo the call of the [over 100 NGOs](#) that have already requested such policy measures from the Commission, and support the [model anti-SLAPP Directive](#), published by a coalition of NGOs and journalist associations, as providing a well-reasoned legal basis and robust measures to tackle the use of SLAPPs. If such Directive was already in place, the current SLAPP by Eni would not threaten *Il Fatto's* reporting, nor its operations.

We believe in the importance of transparency, which is why we intend to publish this letter and reserve the right to make your response public.

We remain at your disposal should you be interested to further discuss the details of the case.

Yours sincerely,

Magda Stoczkiewicz,
Programme Director, Greenpeace European Unit

Also on behalf of:

Balázs Dénes, Civil Liberties Union for Europe;

Prof. em. Dirk Voorhoof, Human Rights Centre, Ghent University and Legal Human Academy;

Donatella Bianchi, WWF Italy;

Flutura Kusari, European Centre for Press and Media Freedom (ECPMF);

Francesco Ferrante, Kyoto Club;

François Veillerette, Générations Futures (France);

Jagoda Munic, Friends of the Earth Europe;

Jessica Ní Mhainín, Index on Censorship;

Luca Manes, ReCommon;

Marco Piccolo (presidente), Fondazione Finanza Etica;

Matthew Caruana Galizia, The Daphne Caruana Galizia Foundation;

Nico Muzi, Mighty Earth;

Paola Rosà, OBC Transeuropa;

Pascoe Sabido, Corporate Europe Observatory (CEO);

Pauline Dutron, Les Amis de la Terre-Belgique;

Ricardo Gutiérrez, European Federation of Journalists;

Sarah Clarke, ARTICLE 19;

Stefano Ciafani, Legambiente;

Dr Suelette Dreyfus, Blueprint for Free Speech;

Veronika Feicht, Umweltinstitut München;

Williams Tods, Transport & Environment.