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Division for Co-operation on Freedom of Expression

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LEGAL OPINION

On the Draft Law of Luxembourg
transposing Directive (EU) 2024/1069 on the protection of persons
who participate in public debate against manifestly unfounded claims
or abusive court proceedings
('Strategic Lawsuits Against Public Participation' - SLAPPs)

Following comments received by the Ministry of Justice of Luxembourg on the original Council of Europe Legal Opinion LEX__2026_13, the current text represents an updated Legal Opinion on the Draft Law of Luxembourg transposing Directive (EU) 2024/1069 on the protection of persons who participate in public debate against manifestly unfounded claims or abusive court proceedings ('Strategic Lawsuits Against Public Participation' - SLAPPs)

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I. INTRODUCTION

This legal review examines the Luxembourg Draft Law (hereinafter, "the draft"), transposing Directive (EU) 2024/1069[1] 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. The draft was filed with the Chamber of Deputies on 28 January 2026 and approved by the Council of Government on 9 January 2026.

The review assesses the draft dominantly against two benchmarks. The first is Directive (EU) 2024/1069 itself, which establishes binding minimum procedural safeguards for Member States. The second is the Council of Europe Recommendation CM/Rec(2024)2 of the Committee of Ministers[2] to member States on countering the use of strategic lawsuits against public participation, adopted on 5 April 2024, which provides a broader human-rights and democratic-participation framework and which is not considered in the explanatory memorandum (EM) of the draft.

Luxembourg's draft law reflects a clear commitment to ensuring effective transposition of Directive (EU) 2024/1069 and provides a useful basis for broader alignment with Recommendation CM/Rec(2024)2 on countering the use of SLAPPs.

In addition to the draft law and the explanatory memorandum, this review has also taken into account the opinion of the Superior Court of Justice[3], the opinion of the Press Council of Luxembourg[4], and the parliamentary amendments[5] proposed during the legislative process, insofar as these materials illuminate issues of scope, procedural operability, and legal certainty.

Following submission of the draft bill transposing Directive (EU) 2024/1069 on the protection of persons participating in public debate against strategic lawsuits (Bill No. 8696) by the Ministry of Justice of Luxembourg, **Greenpeace Luxembourg requested the Council of Europe legal opinion of the draft law to determine whether it is in line**

[1] 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")
[2] Recommendation CM/Rec(2024)2 of the Committee of Ministers to member States on countering the use of strategic lawsuits against public participation, adopted on 5 April 2024
[3] Cour supérieure de Justice, Avis, 17 February 2026
[4] Conseil de Presse du Luxembourg, Avis, 6 March 2026
[5] Tanson, Amendements au projet de loi n° 8696

with EU Directive 2024/1069 and Council of Europe Recommendation CM/Rec(2024)2 on SLAPPs.

This analysis is based on an unofficial English translation of the draft law and the three other accompanying documents, made available for the purposes of this review. The French text is the sole authoritative version. Where a conclusion may depend on specific wording, this is noted accordingly.

II. SCOPE AND BENCHMARK

The Directive establishes minimum procedural safeguards applicable to civil and commercial matters with cross-border implications. It expressly permits Member States to introduce or maintain more favorable provisions. The Luxembourg draft exercises that latitude to some extent: it attempts to expand the safeguards and remedies to purely domestic civil disputes, deliberately omitting the cross-border limitation that defines the Directive's scope. This is a significant protective choice.

The Council of Europe Recommendation adopts a broader approach. It recognises that pressures on public participation may arise not only through civil proceedings but also through administrative and criminal mechanisms, and it calls on member States to put in place a comprehensive legislative framework, structural and procedural safeguards, remedies, support measures, transparency, and regular review. The Recommendation's indicator framework, support architecture, and transparency provisions go materially further than the Directive's minimum requirements.

This review accordingly distinguishes, throughout the analysis, between the Directive floor - what the draft must do to comply with binding EU law, and the Council of Europe benchmark, where the draft could be further strengthened to reflect the fuller logic of the Recommendation. Where the draft already meets or exceeds the Directive, this is noted. Where the Recommendation goes further, the nature and weight of the additional expectation is assessed on its own terms.

III. EXECUTIVE SUMMARY

The Luxembourg draft law provides a solid basis for the transposition of Directive (EU) 2024/1069 and in several important respects goes beyond its minimum requirements.

In particular, the draft extends the procedural safeguards and remedies to purely domestic civil disputes, thereby removing the cross-border limitation that defines the Directive's scope. It exercises the optional power under Article 6(2) of the Directive to allow courts to apply early-dismissal and remedy measures ex officio. It establishes concrete six-week hearing deadlines for security and early-dismissal applications, which are more specific than the Directive's general requirement of accelerated treatment. It provides a detailed mechanism governing the withdrawal of claims, designed to prevent claimants from avoiding remedies by discontinuing proceedings. It also introduces a two-tier framework for defendant support, combining entity-based intervention with a broader amicus curiae mechanism open to any person whose competence may usefully inform the proceedings.

On the basis of the unofficial English translation available for the purposes of this review, no clear instance of failure to transpose a binding Directive requirement has been identified in the substantive and procedural provisions of the draft. As regards Article 20 of the Directive, this review proceeds on the understanding that the necessary administrative arrangements for annual data collection and transmission to the European Commission are being put in place outside the draft law.The principal value of this review in addition lies by assessing whether the draft could be further strengthened to align more fully with the Council of Europe Recommendation CM/Rec(2024)2, which adopts a broader human-rights and democratic-participation approach.

In that regard, a number of targeted opportunities for refinement have been identified. The main opportunities for refinement arise in the following areas:

Indicators of abusive proceedings. The draft includes the core indicators from the Directive but does not reflect the fuller, expressly non-exhaustive list in paragraph 8 of the Council of Europe Recommendation, which is designed to assist courts in identifying SLAPP patterns in practice.

Early dismissal and judicial usability. While the draft provides for early dismissal, including ex officio, the relationship between the dismissal mechanism and the statutory indicators is not expressly established. Clarifying that linkage would strengthen legal certainty and assist courts in determining whether a claim is manifestly unfounded.

Support for targets and victims. The draft provides for the publication of information on safeguards, remedies, and existing support measures. The Council of Europe Recommendation envisages a broader support architecture,

including facilitated access to legal, financial, psychological, and practical support.

Transparency and data collection. The draft provides for the publication of appellate decisions. Beyond the administrative implementation of Article 20, the Recommendation points towards a broader culture of transparency, including broader data-collection and dissemination measures**.**

The recommendations are therefore framed primarily as refinements aimed at fuller alignment with Recommendation CM/Rec(2024)2, alongside one limited implementation-related observation on transparency and data arrangements. Several recommendations are framed as invitations to clarify or complement existing provisions rather than as criticism of the draft's overall approach, which is recognised as substantive and protective in orientation.

IV. GAP-ANALYSIS TABLE

Theme	Luxembourg draft	Directive floor	Council of Europe benchmark	Status	Suggested action
Scope	Extends to domestic disputes; civil/commercial only; ex officio powers for Chapters 3-4	Civil/commercial with cross-border implications	All causes of legal action, including administrative and criminal contexts	**Green**	Note the broader Council of Europe ecology in the Explanatory Memorandum or future policy review
Definitions and indicators	Tracks Directive definitions; four core indicators	Definition plus four indicators	Broader public participation; ten non-exhaustive indicators (para. 8)	**Amber**	Clarify the non-exhaustive character of the indicators; add selected Council of Europe indicators
Early dismissal	Ex officio and defendant-triggered; six-week hearing; "manifestly unfounded" undefined	Early dismissal after appropriate examination	Linked to paragraph 8 indicators; accelerated handling; broader procedural safeguards	**Amber**	Clarify the relationship between the dismissal mechanism and the indicators
Remedies and deterrence	Full costs (Art. 10); damages (Art. 11); civil fine up to EUR 15,000 (Art. 12)	Costs, penalties or equally effective measures, compensation	Full compensation, including pecuniary and non-pecuniary harm; proportionate penalties; publication as penalty	**Amber**	Future review may assess whether the combination of full costs, damages, and the capped civil fine is sufficiently dissuasive in cases involving well-resourced claimants.
Third-country protection	Recognition refusal (Art. 13); jurisdiction for compensation (Art. 14); stay pending third-country proceedings	Refusal ground; special jurisdiction for compensation	Compensation for damages and costs irrespective of claimant domicile	**Green**	Brief positive note
Support for targets and victims	Information on safeguards, remedies, and existing support published on Ministry website (Art. 16(1))	One-stop information on safeguards, remedies, and existing support measures	Structured legal, financial, psychological, and practical support; secondary victims	**Amber**	Complement the information gateway with a structured support framework
Transparency and data	Publication of court judgments (Art. 16); EM states Art. 20 does not require transposition	Publication of final judgments; annual data submission to the Commission (Art. 20)	Public register; data collection; information-sharing with relevant professional bodies; culture of transparency	**Amber**	No legislative amendment appears necessary for Article 20; consider broader data-collection and dissemination measures in line with the Recommendation.

Note: *Green indicates that Luxembourg meets or exceeds the Directive and that no material Council of Europe concern requires a numbered recommendation. Amber indicates a point that appears Directive-compliant but narrower than the Council of Europe logic in a way that warrants a recommendation or body-text discussion. No Red issues have been identified on the face of the unofficial English translation available for the purposes of this review.*

V. THEMATIC ANALYSIS

A. Scope and conceptual framing

The draft extends the procedural safeguards to purely domestic civil disputes, removing the EU Directive's cross-border limitation. This is expressly permitted by Article 3 of the Directive and aligns with the broader preventive logic of the Council of Europe Recommendation. The draft applies to civil and commercial matters and expressly excludes fiscal, customs, and administrative matters, state-liability acts, criminal proceedings, and arbitration, mirroring the Directive's scope.

The Recommendation recognises that pressures on public participation may also arise through administrative and criminal mechanisms and encourages member States to review broader domestic laws and practices accordingly. Although this does not require the present draft to regulate beyond civil procedure, it may be beneficial to use the present momentum to explore the possibility of doing so, to furthermore align with the Recommendations. In that connection, it is notable that both the Press Council and the proposed parliamentary amendments argue that excluding privately initiated criminal proceedings, in particular direct criminal summonses and criminal complaints brought with a civil-party claim, may create a risk of circumvention of the law's protective purpose.

B. Definitions and indicators

The definitions in Article 3 of the draft track the Directive model closely. The definition of "matter of public interest" in Article 3(2°) lists five categories - fundamental rights, public health, safety, environment and climate; activities of public figures; matters before legislative, executive, or judicial bodies; allegations of corruption, fraud, or criminal and administrative offences; and activities aimed at protecting Article 2 Treaty of European Union values - using the phrase "such as", which suggests a non-exhaustive list. This is consistent with the EU Directive.

The definition of abusive proceedings in Article 3(3°) also broadly follows the Directive. It refers to claims that are manifestly unfounded or to proceedings intended to prevent, restrict, or penalise public participation and lists four indicators: disproportionate or excessive claims; multiple proceedings by the claimant or associated parties concerning similar matters; intimidation, harassment, or threats by the claimant or its representatives; and bad-faith procedural tactics such as delaying tactics, abusive

forum shopping, or bad-faith discontinuance of proceedings at a late stage. These correspond to the EU Directive's core structure.

The Council of Europe Recommendation, however, goes further. Paragraph 8 provides a fuller, expressly non-exhaustive list of indicators designed to assist courts and other authorities in identifying SLAPPs in practice. In addition to the elements reflected in the Directive and the draft, it refers to indications that the arguments advanced are unfounded; deliberate targeting of individuals rather than the organisation responsible; multiple or co-ordinated actions; public-relations offensives accompanying litigation; refusal to engage with non-judicial mechanisms; and a broader assessment of imbalance of power and abusive intent.

The draft's current list is sufficient for EU Directive purposes, but a clearer indication that the list is non-exhaustive, together with selective supplementation by reference to paragraph 8 of the Recommendation, would improve judicial usability and strengthen alignment with the broader Council of Europe framework.

C. Early dismissal and procedural usability

The draft provides both defendant-triggered and ex officio early-dismissal mechanisms. Under Article 8, the court may, on request by the defendant or of its own motion, dismiss an action that is manifestly unfounded after having examined the case in an appropriate manner. The draft further requires that, where the defendant seeks dismissal, the parties be heard within six weeks. This is a concrete and commendable specification of the EU Directive's requirement that such applications be treated in an accelerated manner.

The possibility of acting ex officio is also a point of strength. Not all national transposition models make express use of the latitude afforded by Article 6(2) of the Directive. Luxembourg's choice therefore enhances the protective value of the mechanism. At the same time, the opinion of the Superior Court of Justice usefully highlights a number of domestic implementation questions, including the integration of the new safeguards into written and oral procedure, the practical operation of ex officio powers, and the rigidity of the six-week hearing timetable.

In addition to this, the relationship between Article 8 and the definition of abusive proceedings in Article 3 is not made fully explicit. The explanatory memorandum indicates that "manifestly unfounded" is left to judicial assessment rather than statutory definition, which is a defensible legislative choice. The Council of Europe Recommendation, however, envisages that the early-dismissal mechanism should

operate in close connection with the indicator framework, so that the presence of paragraph 8 indicators can help the court to identify abusive or manifestly unfounded claims at an early stage.

The Luxembourg draft is stronger than some comparator models because it already contains ex officio powers and a six-week timetable. Nevertheless, an express cross-reference between Article 8 and Article 3(3°), or an equivalent clarification in the explanatory memorandum, would likely strengthen legal certainty and practical effectiveness.

A related issue concerns the treatment of proceedings once early dismissal has been sought. The Council of Europe Recommendation favours not only accelerated consideration but also a broader procedural environment that ensures the claimant does not continue to impose unnecessary burdens while the dismissal request is pending. The draft already moves in that direction through its procedural design, but this remains an area where judicial guidance and implementation practice will matter.

D. Remedies and deterrence

The remedial architecture of the draft is, in general, robust. Article 10 provides that the claimant may be ordered to bear procedural costs, including full legal-representation costs unless excessive. Article 11 provides for damages. Article 12 adds a civil fine of up to EUR 15,000 where the proceedings are abusive. Taken together, these provisions are capable of satisfying the EU Directive's requirement that courts may impose penalties or other equally effective measures, including compensation for damage, where national law provides for them.

The draft therefore does not give rise to a significant reservation as regards remedies. This distinguishes it from legislative models where compensation is left exclusively outside the anti-SLAPP framework. The explanatory memorandum also indicates that the combination of damages and a civil fine is intended to address the Directive's remedial requirements.

Article 12 sets a maximum civil fine of EUR 15,000. Given that the draft also provides for full costs and damages, this cap does not in itself demonstrate inadequate deterrence. Nonetheless, the EU Directive requires that penalties or equally effective measures be effective, proportionate, and dissuasive, and the Council of Europe Recommendation similarly stresses proportionality in light of the claimant's resources. It may therefore be useful, in future review, to assess whether the combination of full costs, damages, and

the capped civil fine is sufficiently dissuasive in cases involving well-resourced claimants.

A distinct point arises in relation to publication. The Directive's remedial menu includes publication of the court decision where national law provides for it. Article 16(2) of the draft provides for publication of anonymised judicial decisions as a transparency mechanism, which is not the same as publication ordered against the claimant as a sanction. Given the existence of other remedial measures in the draft, this distinction need not be pressed as a principal criticism, but it is worth keeping in mind when assessing the overall deterrent architecture.

E. Support architecture, transparency, and data

Article 16(1) of the draft requires publication, on the website of the Ministry of Justice, of information on the safeguards and remedies available under the law and on existing support measures. This reflects the EU Directive's "one-stop information" logic and is a useful implementation choice.

The Council of Europe Recommendation goes significantly further on this matter. It calls not only for information about available mechanisms but also for organised and readily accessible support for targets and victims of SLAPPs, including legal, financial, psychological, and practical assistance. It also recognises that secondary or indirect victims, such as family members, associates, or legal representatives, may require support in appropriate cases. The draft does not yet establish such a support architecture. Its current model is primarily informational.

This does not amount to a failure to transpose the Directive, but it does indicate that the draft remains narrower than the broader protective approach set out in the Recommendation. Consideration could therefore usefully be given to whether the current information gateway should be complemented by a more structured support framework, whether through legislation, administrative arrangements, or future policy development.

Transparency and data raise a related but partly distinct issue. Article 16(2) provides for publication of anonymised decisions of the Constitutional Court, Court of Cassation, and Court of Appeal applying the law. This is a meaningful transparency measure and should be retained. The explanatory memorandum states that Article 20 of the Directive does not require transposition. In light of the clarification received from the Ministry of Justice, this review proceeds on the understanding that the necessary administrative

arrangements for annual data collection and transmission to the European Commission are being put in place outside the draft law. Against that background, the remaining point is not one of legislative transposition, but whether broader data-collection and dissemination practices could in future further support the culture of transparency envisaged by the Recommendation.

The Council of Europe Recommendation goes further on transparency. Paragraph 47 calls for full transparency and publicity around cases found to constitute SLAPPs. Paragraph 48 provides for the establishment of a public register of SLAPP cases, kept up to date and made available to the public. Paragraph 49 recommends that judicial or other competent authorities provide information to bar associations and, where appropriate, other relevant professional bodies about the outcome of SLAPP cases.

F. Broader alignment with the Council of Europe Recommendation

The draft's civil-only scope is consistent with the EU Directive to a large extent. The Recommendation, however, treats SLAPPs as potentially arising across civil, administrative, and criminal contexts, and calls for regular review of the broader framework.

The Council of Europe Recommendation also addresses education, training, and awareness-raising for the judiciary and legal professionals. While these provisions do not require legislative transposition in this bill, they form part of the broader implementation environment that supports effective application of the procedural safeguards.

G. Third-country protection

The draft provides two complementary safeguards against third-country SLAPPs. Article 13 establishes a ground for refusing recognition and enforcement of a third-country judgment where the proceedings are considered manifestly unfounded or abusive under Luxembourg law. Article 14 confers jurisdiction on the Luxembourg courts to hear actions for compensation for damages and costs related to proceedings before a non-EU court.

A limited drafting point nevertheless merits verification against the Directive and the authoritative French text. The Superior Court of Justice observed that Article 13 appears to insert the qualifier "abusive" into the description of the third-country proceedings concerned, whereas the Directive's wording is broader. If that reading is confirmed, the provision could risk narrowing the scope of the refusal ground beyond what Article 16 of

the Directive requires. Closer alignment with the Directive's formulation would strengthen legal certainty.

A further point of interpretation may also arise in relation to Article 14. The Superior Court indicated that the French-language framing appears to introduce a restriction linked to the claimant being domiciled outside the European Union, whereas other language versions of the Directive do not seem to contain that limitation. Subject to those drafting points, these provisions remain broadly aligned with the Directive's objective of ensuring effective protection against third-country proceedings and judgments.

Subject to the drafting verification noted above, these provisions largely align with the Directive's requirements and with the Recommendation's encouragement of effective protection against third-country judgments. This remains a relative point of strength in the draft and does not call for a separate numbered recommendation.

VI. CONSOLIDATED RECOMMENDATIONS

A. Limited implementation and transparency point

Recommendation 1 - Broader data collection and dissemination

In light of the clarification that Article 20 of Directive (EU) 2024/1069 will be implemented through administrative arrangements rather than through a specific legislative provision, no amendment to the draft appears necessary on this point. Consideration could nevertheless be given, in line with Recommendation CM/Rec(2024)2, to whether the publication mechanism under Article 16(2) could over time be complemented by broader data-collection and dissemination measures, including, where appropriate, information-sharing with bar associations and other relevant professional bodies.

B. Recommended amendments for fuller alignment with Recommendation CM/Rec(2024)2

Recommendation 2 - Indicators of abusive proceedings

The Ministry of Justice may wish to consider clarifying that the indicators of abusive proceedings listed in Article 3(3°) are non-exhaustive, and supplementing them with selected indicators drawn from paragraph 8 of Recommendation CM/Rec(2024)2, in particular:

(i) indications that arguments put forward are unfounded;
(ii) deliberate targeting of individuals rather than the organisations responsible;
(iii) multiple or co-ordinated actions; and
(iv) systematic refusal to engage with non-judicial mechanisms.

Recommendation 3 - Early dismissal and indicators

For the sake of legal certainty and practical effectiveness, the Ministry of Justice may wish to consider clarifying the relationship between the early-dismissal mechanism under Article 8 and the indicators of abusive proceedings under Article 3(3°), so as to assist courts in determining, at an early stage, whether a claim is manifestly unfounded or abusive, and to further align the draft with paragraphs 25-34 of CM/Rec(2024)2.

Recommendation 4 - Support architecture

The Ministry of Justice may wish to consider complementing the information gateway envisaged by Article 16 with a more structured framework facilitating access to legal, financial, psychological, and practical support for targets and victims of abusive proceedings, in line with paragraphs 50-56 of CM/Rec(2024)2.

Recommendation 5 - Broader Council of Europe framing

Given that Recommendation CM/Rec(2024)2 recognises that pressures on public participation may also arise through administrative and criminal mechanisms, the Ministry of Justice may wish to note expressly, whether in the explanatory memorandum or in future policy review, that the present draft constitutes one component of a broader anti-SLAPP framework subject to further review in light of wider Council of Europe standards.