



EUROPEAN PARLIAMENT

2014 - 2019

Committee on the Internal Market and Consumer Protection

2013/0402(COD)

30.3.2015

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (COM(2013)0813 – C7-0431/2013 – 2013/0402(COD))

Rapporteur: Lara Comi

PA_Legam

SHORT JUSTIFICATION

This proposal is of particular importance, because its main aim is to identify a set of rules with a view to improving the competitiveness of European businesses through innovation, to strengthen Europe's role as a leader on the global industrial market.

During the process of research and creation of new ideas, products or services, there is a great deal of information which is vital for the competitiveness of the idea or the business and which falls outside the scope of the protection of intellectual property rights.

Trade secrets are therefore a complementary protection instrument and it is important and necessary to regulate, at EU level, their acquisition, use or disclosure.

The Committee on the Internal Market and Consumer Protection (IMCO) has looked at the aspects relating to the internal market and consumer protection and, by a very large majority, has adopted a text which has found very balanced solutions to the most controversial points and taken into consideration all the relevant interests.

In the recitals, some clarifications have been made, to facilitate the interpretation of the legislative text. In particular, it has been specified that the directive does not adversely affect fundamental rights, the public interest, worker mobility and the trade unions' right to negotiate, as recognised in some Member States.

In addition, it was deemed important to specify that this legislation is to be applied to trade secrets relating not only to products, but also to services.

The definition of 'trade secret' has been aligned to that given in the title of the proposal for a directive, specifying that its commercial value should be actual or potential, thus ensuring a sufficiently broad scope.

The acquisition, use or disclosure of a trade secret are to be considered legitimate where national and EU law so require and where they are authorised by the laws protecting the rights of the trade secret holder. This directive, indeed, pursues the aim of increasing the competitiveness of companies by protecting trade secrets during the process of research and creation of new ideas.

To reinforce this aim, unlike the Commission, which has proposed the assignment of responsibility on the basis of the guilt principle, namely by assessing intentionality or negligence, IMCO advocates objective responsibility, to give greater protection to trade secrets and companies, especially SMEs.

With regard to the limitation period, one of the most controversial issues, it was decided to adopt a single period of time, contrary to the Commission's proposal of a minimum and maximum period. It was thus decided that three years was the most appropriate time frame within which to bring an action to protect a trade secret.

This single time frame will enable this important aspect to be harmonised in all national laws, so that operators will enjoy the same right all over the Union. The three-year duration appears to be a reasonable term which can protect all the interests at stake, in a balanced way.

As regards the protection and mobility of workers, it was agreed to safeguard their right to use any information and knowledge acquired from previous professional activities, but limiting it to that which is not deemed to be unlawful under Article 3.

Likewise, it was decided not to jeopardise the use of information and trade secrets by public authorities in the performance of their duties under national or EU law.

Last but not least, the committee decided to strengthen the confidentiality of trade secrets during the course of legal proceedings, limiting the number of people who might get to know the trade secret in question.

The IMCO committee's proposed amendments, should they be accepted by the Committee on Legal Affairs, the committee responsible, will make this new instrument more effective in terms of the aims pursued, particularly in making our EU companies –and therefore the internal market – more competitive , in addition to protecting consumers.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Open innovation is an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. Trade secrets have an important role in protecting the exchange of knowledge between businesses within and across the borders of the internal market in the context of research and development and innovation. Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the

Amendment

(2) Open innovation is an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. Trade secrets have an important role in protecting the exchange of knowledge between businesses within and across the borders of the internal market in the context of research and development and innovation. Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the

internal market. Open innovation is a catalyst for new ideas to find their way to the market meeting the needs of consumers and tackling societal challenges. In an internal market where barriers to such cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation is also important for employment growth and improving competitiveness of the Union economy. Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by third parties.

internal market. Open innovation is a catalyst for new ideas to find their way to the market meeting the needs of consumers and tackling societal challenges. In an internal market where barriers to such cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation is also important for employment growth and improving competitiveness of the Union economy. Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by third parties. ***The dissemination of knowledge and information should be considered essential to ensuring dynamic, positive and equal business development opportunities, especially for small and medium-sized enterprises.***

Amendment 2

Proposal for a directive Recital 8

Text proposed by the Commission

(8) It is appropriate to provide for rules at Union level to approximate the national legislative systems so as to ensure a sufficient and consistent level of redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret. For this purpose, it is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed

Amendment

(8) It is appropriate to provide for rules at Union level to approximate the national legislative systems so as to ensure a sufficient and consistent level of ***civil*** redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret. For this purpose, it is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed

as to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality. By nature, such definition should exclude trivial information and should not extend to the knowledge and skills gained by employees in the normal course of their employment and which are known among or accessible to persons within the circles that normally deal with the kind of information in question.

as to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality. ***Such information or know-how should furthermore have commercial value, whether actual or potential, and the disclosure of it would be likely to harm the legitimate economic interest of the person lawfully controlling it.*** By nature, such definition should exclude trivial information and should not extend to the knowledge and skills gained by employees in the normal course of their employment and which are generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question.

Amendment 3

Proposal for a directive Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) This Directive should not affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with national law and practices which respect Union law.

Amendment 4

Proposal for a directive Recital 10 b (new)

Text proposed by the Commission

Amendment

(10b) The acquisition or disclosure of a trade secret by a public body, whether

imposed or permitted by law, should not constitute an unlawful use or disclosure. Such acquisition or disclosure should however be clearly within the mandate of the relevant public body, and exceeding this mandate should constitute an unlawful act.

Justification

There is a need to clarify that the acquisition or disclosure of a trade secret is not unlawful when requests of information from public bodies are prescribed by the law.

Amendment 5

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) In line with the principle of proportionality the measures and remedies intended to protect trade secrets should be tailored to meet the objective of a smooth functioning internal market for research and innovation without jeopardising ***other objectives and principles of public interest***. In this respect, the measures and remedies ensure that competent judicial authorities account for the value of a trade secret, the seriousness of the conduct resulting in the unlawful acquisition, use or disclosure of the trade secret as well as the impact of such conduct. It should also be ensured that the competent judicial authorities are provided with the discretion to weigh up the interests of the parties to the litigation, as well as the interests of third parties including, where appropriate, consumers.

Amendment

(11) In line with the principle of proportionality the measures and remedies intended to protect trade secrets should be tailored to meet the objective of a smooth functioning internal market for research and innovation, ***in particular by having a deterrent effect against the unlawful acquisition, use and disclosure of a trade secret***, without jeopardising ***fundamental rights and freedoms or the public interest, such as public safety, consumer protection, public health and environmental protection and without any prejudice to the mobility of workers***. In this respect, the measures and remedies ensure that competent judicial authorities account for ***factors such as*** the value of a trade secret, the seriousness of the conduct resulting in the unlawful acquisition, use or disclosure of the trade secret as well as the impact of such conduct. It should also be ensured that the competent judicial authorities are provided with the discretion to weigh up the interests of the parties to the litigation, as well as the interests of

third parties including, where appropriate, consumers.

Amendment 6

Proposal for a directive Recital 12

Text proposed by the Commission

(12) The smooth functioning of the internal market would be undermined if the measures and remedies provided for were used to pursue illegitimate intents incompatible with the objectives of this Directive. Therefore, it is important to ensure that judicial authorities are empowered to sanction abusive behaviour by claimants who act in bad faith and submit manifestly unfounded applications. It is also important that measures and remedies provided for should not restrict the freedom of expression and information (which encompasses media freedom and pluralism as reflected in Article 11 of the Charter of Fundamental Rights of the European Union) or whistleblowing activity. Therefore the protection of trade secrets should not extend to cases in which disclosure of a trade secret serves the public interest in so far as relevant misconduct or wrongdoing is revealed.

Amendment

(12) The smooth functioning of the internal market would be undermined if the measures and remedies provided for were used to pursue illegitimate intents, ***such as creating unjustified barriers to the internal market or to labour mobility, that are*** incompatible with the objectives of this Directive. Therefore, it is important to ensure that judicial authorities are empowered to sanction abusive behaviour by claimants who act in bad faith and submit manifestly unfounded applications. It is also important that measures and remedies provided for should not restrict the freedom of expression and information (which encompasses media freedom and pluralism as reflected in Article 11 of the Charter of Fundamental Rights of the European Union) or whistleblowing activity. Therefore the protection of trade secrets should not extend to cases in which disclosure of a trade secret serves the public interest in so far as relevant misconduct or wrongdoing is revealed.

Amendment 7

Proposal for a directive Recital 13

Text proposed by the Commission

(13) In the interest of legal certainty and considering that legitimate trade secret holders are expected to exercise a duty of

Amendment

(13) In the interest of ***preserving the smooth functioning of the internal market for research and innovation and of*** legal

care as regards the preservation of the confidentiality of their valuable trade secrets and the monitoring of their use, it appears appropriate to restrict the possibility to initiate actions for the protection of trade secrets to a *limited* period following the date on which the trade secret holders became aware, or had reason to become aware, of the unlawful acquisition, use or disclosure of their trade secret by a third party.

certainty and considering that legitimate trade secret holders are expected to exercise a duty of care as regards the preservation of the confidentiality of their valuable trade secrets and the monitoring of their use, it appears appropriate to restrict the possibility to initiate actions for the protection of trade secrets to a period *of three years* following the date on which the trade secret holders became aware, or had reason to become aware, of the unlawful acquisition, use or disclosure of their trade secret by a third party.

Amendment 8

Proposal for a directive Recital 15

Text proposed by the Commission

(15) Unlawful acquisition of a trade secret by a third party could have devastating effects on its legitimate holder since once publicly disclosed it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. As a result, it is essential to provide for fast and accessible interim measures for the immediate termination of the unlawful acquisition, use or disclosure of a trade secret. Such relief must be available without having to await a decision on the substance of the case, with due respect for the rights of defence and the principle of proportionality having regard to the characteristics of the case in question. Guarantees of a level sufficient to cover the costs and the injury caused to the respondent by an unjustified request may also be required, particularly where any delay would cause irreparable harm to the legitimate holder of a trade secret.

Amendment

(15) Unlawful acquisition of a trade secret by a third party could have devastating effects on its legitimate holder since once publicly disclosed it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. As a result, it is essential to provide for fast and accessible interim measures for the immediate termination of the unlawful acquisition, use or disclosure of a trade secret, *including when such a trade secret is used for the provision of services*. Such relief must be available without having to await a decision on the substance of the case, with due respect for the rights of defence and the principle of proportionality having regard to the characteristics of the case in question. Guarantees of a level sufficient to cover the costs and the injury caused to the respondent by an unjustified request may also be required, particularly where any delay would cause irreparable harm to the legitimate holder of a trade secret.

Amendment 9

Proposal for a directive Recital 16

Text proposed by the Commission

(16) For the same reason, it is also important to provide for measures to prevent further unlawful use or disclosure of a trade secret. For prohibitory measures to be effective, their duration, ***when circumstances require a limitation in time***, should be sufficient to eliminate any commercial advantage which the third party could have derived from the unlawful acquisition, use or disclosure of the trade secret. In any event, no measure of this type should be enforceable if the information originally covered by the trade secret is in the public domain for reasons that cannot be attributed to the respondent.

Amendment

(16) For the same reason, it is also important to provide for measures to prevent further unlawful use or disclosure of a trade secret. For prohibitory measures to be effective ***and proportionate***, their duration should be sufficient to eliminate any commercial advantage which the third party could have derived from the unlawful acquisition, use or disclosure of the trade secret, ***including when such a trade secret is used for the provision of services, and should be limited in time to avoid the creation of unjustified barriers to competition in the internal market***. In any event, no measure of this type should be enforceable if the information originally covered by the trade secret is in the public domain for reasons that cannot be attributed to the respondent.

Amendment 10

Proposal for a directive Recital 17

Text proposed by the Commission

(17) A trade secret may be unlawfully used to design, manufacture or market goods, or components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the functioning of the internal market. In ***those*** cases and when the trade secret in question has a significant impact on the quality, value or price of the resulting good or on reducing the cost, facilitating or speeding up its manufacturing or marketing processes, it is

Amendment

(17) A trade secret may be unlawfully used to design, manufacture or market goods, or components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the functioning of the internal market. In ***the*** cases ***where unlawful acquisition has been demonstrated*** and when the trade secret in question has a significant impact on the quality, value or price of the resulting good or on reducing the cost, facilitating or speeding up its

important to empower judicial authorities to order appropriate measures with a view to ensure that those goods are not put on the market or are removed from it. Considering the global nature of trade, it is also necessary that these measures include the prohibition of importing those goods into the Union or storing them for the purposes of offering or placing them on the market. Having regard to the principle of proportionality, corrective measures should not necessarily entail the destruction of the goods when other viable options are present, such as depriving the good of its infringing quality or the disposal of the goods outside the market, for example, by means of donations to *by* charitable organisations.

manufacturing or marketing processes, it is important to empower judicial authorities to order appropriate measures with a view to ensure that those goods are not put on the market or are removed from it. Considering the global nature of trade, it is also necessary that these measures include the prohibition of importing those goods into the Union or storing them for the purposes of offering or placing them on the market. Having regard to the principle of proportionality, corrective measures should not necessarily entail the destruction of the goods when other viable options are present, such as depriving the good of its infringing quality or the disposal of the goods outside the market, for example, by means of donations to charitable organisations.

Amendment 11

Proposal for a directive Recital 27

Text proposed by the Commission

(27) This Directive should not affect the application of competition law rules, in particular Articles 101 and 102 of the Treaty on the Functioning of the European Union. The measures provided for in this Directive should not be used to restrict competition *unduly* in a manner contrary to that Treaty.

Amendment

(27) This Directive should not affect the application of competition law rules, in particular Articles 101 and 102 of the Treaty on the Functioning of the European Union. The measures provided for in this Directive should not be used to *unfairly* restrict competition, *delay access to the internal market and/or create barriers to labour mobility* in a manner contrary to that Treaty.

Amendment 12

Proposal for a directive Recital 28

Text proposed by the Commission

(28) The measures adopted to protect trade secrets against their unlawful acquisition, disclosure and use should not affect the application of any other relevant law in other areas including intellectual property rights, privacy, access to documents and the law of contract. However, where the scope of application of Directive 2004/48/EC of the European Parliament and of the Council⁸ and the scope of this Directive overlap, this Directive takes precedence as *lex specialis*.

⁸ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L157, 30.4.2004, p.45).

Amendment

(28) The measures adopted to protect trade secrets against their unlawful acquisition, disclosure and use should not affect the application of any other relevant law in other areas including ***protection of the environment and environmental liability, consumer protection, health and safety requirements, health protection,*** intellectual property rights, privacy, access to documents and ***information, and*** the law of contract. However, where the scope of application of Directive 2004/48/EC of the European Parliament and of the Council⁸ and the scope of this Directive overlap, this Directive takes precedence as *lex specialis*

⁸ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L157, 30.4.2004, p.45).

Amendment 13

Proposal for a directive Article 1

Text proposed by the Commission

This Directive lays down rules on the protection against the unlawful acquisition, disclosure ***and use*** of trade secrets.

Amendment

This Directive lays down rules on the protection against the unlawful acquisition, ***use and*** disclosure of ***undisclosed know-how and business information*** (trade secrets).

Amendment 14

Proposal for a directive

Article 2 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

(1) ‘trade secret’ means information which meets all of the following requirements:

Amendment

(1) ‘trade secret’ means ***know-how and business*** information which meets all of the following requirements:

Amendment 15

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point b

Text proposed by the Commission

(b) has commercial value because it is secret;

Amendment

(b) has ***actual or potential*** commercial value because it is secret;

Amendment 16

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point c

Text proposed by the Commission

(c) has been subject to reasonable steps under the circumstances, by the ***person lawfully in control of the information***, to keep it secret.

Amendment

(c) has been subject to reasonable steps under the circumstances, by the ***trade secret holder***, to keep it secret.

Justification

Replacement in order to ensure coherence with the terminology used in Article 2 para. 2.

Amendment 17

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) concerns trials, tests or other secret data which, in order to be developed, require a significant commitment and upon the submission of which marketing authorisation for chemical, pharmaceutical or agricultural products involving the use of new chemicals depends.

Amendment 18

Proposal for a directive

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

(4) 'infringing goods' means goods whose design, quality, manufacturing process or marketing *significantly* benefits from trade secrets unlawfully acquired, used or disclosed.

(4) 'infringing goods' means goods whose design, quality, *characteristics, functioning*, manufacturing process or marketing benefits from trade secrets unlawfully acquired, used or disclosed.

Justification

The addition of the terms "characteristics" and "functioning" includes other aspects beyond the quality of the goods. A good should be considered as infringing if it benefits in any way from a misappropriated trade secret, regardless how "significantly" it benefited therefrom.

Amendment 19

Proposal for a directive

Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful whenever carried out *intentionally or with gross negligence* by:

2. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful whenever carried out by:

Amendment 20

Proposal for a directive

Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) unauthorised access to or copy of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret **or from which the trade secret can be deduced**;

Amendment

(a) unauthorised access to or copy of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret ;

Justification

There is a need to clarify that the trade secret holder is only protected against the unlawful acquisition of the trade secret and not against reverse engineering, which is lawful

Amendment 21

Proposal for a directive

Article 3 – paragraph 3 - introductory part

Text proposed by the Commission

3. The use or disclosure of a trade secret shall be considered unlawful whenever carried out, without the consent of the trade secret holder, **intentionally or with gross negligence**, by a person who is found to meet any of the following conditions:

Amendment

3. The use or disclosure of a trade secret shall be considered unlawful whenever carried out, without the consent of the trade secret holder by a person who is found to meet any of the following conditions:

Amendment 22

Proposal for a directive

Article 3 – paragraph 4

Text proposed by the Commission

4. The use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of use or disclosure, knew or should, under the circumstances, have known that the trade secret was obtained from another person who was

Amendment

4. The **acquisition**, use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of **acquisition**, use or disclosure, knew or should, under the circumstances, have known that the trade secret was obtained

using or disclosing the trade secret unlawfully within the meaning of the paragraph 3.

directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of paragraph 3.

Amendment 23

Proposal for a directive Article 3 – paragraph 5

Text proposed by the Commission

5. The *conscious and deliberate* production, offering or placing on the market of infringing goods, or import, export or storage of infringing goods for those purposes, shall be considered an unlawful use of a trade secret.

Amendment

5. The production, offering or placing on the market of infringing goods, or import, export or storage of infringing goods for those purposes, shall also be considered an unlawful use of a trade secret *when the person carrying out such activities knew, or should, under the circumstances, have known that the trade secret was used unlawfully within the meaning of paragraph 3.*

Amendment 24

Proposal for a directive Article 4

Text proposed by the Commission

1. The acquisition of trade secrets shall be considered lawful when obtained by any of the following means:

- (a) independent discovery or creation;
- (b) observation, study, disassembly or test of a product or object that has been made available to the public or that it is lawfully in the possession of the acquirer of the information;

(c) exercise of the right of workers representatives to information and

Amendment

1. The acquisition of trade secrets shall be considered lawful when obtained by any of the following means:

- (a) independent discovery or creation;
- (b) observation, study, disassembly or test of a product or object that has been made available to the public or that it is lawfully in the possession of the acquirer of the information *who is free from any legally valid duty to limit the acquisition of the trade secret;*

(c) exercise of the right of workers representatives to information and

consultation in accordance with Union and national law and/or practices;

(c) any other practice which, under the circumstances, is in conformity with honest commercial practices.

2. *Member States shall ensure that there shall be no entitlement to the application for the measures, procedures and remedies provided for in this Directive when the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:*

(a) for making legitimate use of the right to freedom of expression and information;

(b) for the purpose of revealing *an applicant's* misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions;

(d) for the purpose of fulfilling a non-contractual obligation;

(e) for the purpose of protecting a legitimate interest.

consultation in accordance with Union and national law and/or practices;

(d) any other practice which, under the circumstances, is in conformity with honest commercial practices.

The acquisition, use and disclosure of trade secret shall be considered lawful to the extent that such acquisition, use or disclosure is required by Union or national law and allowed by provisions thereof protecting the rights of the trade secret holder.

2. *The acquisition, use or disclosure of trade secrets shall be considered lawful to the extent that the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:*

(a) for making legitimate use of the right to freedom of expression and information;

(b) for the purpose of revealing *a* misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions *in accordance with Union and national law and practices;*

(e) for the purpose of protecting a legitimate interest *recognised by Union or national law.*

2a. This Directive shall not affect:

(a) the application of Union or national rules requiring trade secret holders to disclose, for reasons of public interest,

information, including trade secrets, to public authorities for the performance of their duties;

(b) the use of information, knowledge, qualifications and skills of employees obtained in previous employment, to the extent that it is not covered by Article 3.

Amendment 25

Proposal for a directive Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) avoids the creation of barriers to legitimate trade in the internal market.

Amendment

(b) avoids the creation of barriers to legitimate trade, ***competition and workers' mobility*** in the internal market;

Amendment 26

Proposal for a directive Article 7

Text proposed by the Commission

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive ***may be brought within at least one year but not more than two*** years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Amendment

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within ***three*** years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Amendment 27

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret, or who has access to documents which form part of those legal proceedings, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access.

Amendment

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret, or who has access to documents which form part of those legal proceedings, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access. ***Member States may also allow competent judicial authorities to take such measures on their own initiative.***

Amendment 28

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 2 – introductory wording

Text proposed by the Commission

The obligation referred to in the first subparagraph shall cease to exist in any of the following circumstances:

Amendment

The obligation referred to in the first subparagraph shall ***remain in force until the legal proceedings have ended. In any case, the obligation shall*** cease to exist in any of the following circumstances:

Amendment 29

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) where ***in the course of the proceedings***, the alleged trade secret is found not to fulfil the requirements set in point (1) of Article 2;

Amendment

(a) where the alleged trade secret is found not to fulfil the requirements set ***out*** in point (1) of Article 2 ***by a final decision***;

Amendment 30

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Member States shall also ensure that the competent judicial authorities may, on a **duly** reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret.

Amendment

Member States shall also ensure that the competent judicial authorities may, on a reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret. **Member States may also authorise the competent judicial authorities to adopt ex officio measures.**

Amendment 31

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part;

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part, **provided that both parties involved or their representative have access to them;**

Justification

To ensure that both parties have access to the information which has an essential bearing on the content of the case

Amendment 32

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

(b) to restrict access to hearings, when trade secrets may be disclosed, and their corresponding records or transcript. ***In exceptional circumstances, and subject to appropriate justification, the competent judicial authorities may restrict the parties' access to those hearings and order them to be carried out only in the presence of the legal representatives of the parties and authorised experts subject to the confidentiality obligation referred to in paragraph 1;***

Amendment

(b) to restrict access to hearings, when trade secrets ***or alleged trade secrets*** may be disclosed, and their corresponding records or transcript, ***to a limited number of persons, provided that at least one person from each party, its respective lawyer or representative to the proceedings and court officials are given full access to such hearing, records or transcript;***

Amendment 33

**Proposal for a directive
Article 8 – paragraph 3**

Text proposed by the Commission

3. When deciding on the granting or the rejection of ***the application referred to in paragraph 2*** and assessing ***its*** proportionality, the competent judicial authorities shall take into account the legitimate interests of the parties and, where appropriate of third parties, and any potential harm for either of the parties, and where appropriate third parties, resulting from the granting or rejection of such application.

Amendment

3. When deciding on the granting or the rejection of ***measures for preservation of a trade secret*** and assessing ***their*** proportionality, the competent judicial authorities shall take into account ***the need to guarantee the right to an effective remedy and to a fair trial,*** the legitimate interests of the parties and, where appropriate of third parties, and any potential harm for either of the parties, and where appropriate third parties, resulting from the granting or rejection of such application.

Amendment 34

**Proposal for a directive
Article 9 – paragraph 1 – introductory wording**

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities may, at the request of the trade secret holder, order any of the following interim and precautionary measures against the alleged infringer:

Amendment

(Does not affect the English version)

Justification

(Does not affect the English version)

Amendment 35

**Proposal for a directive
Article 9 – paragraph 2**

Text proposed by the Commission

2. Member States shall ensure that the judicial authorities may make the continuation of the alleged unlawful acquisition, use or disclosure of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder.

Amendment

2. Member States shall ensure that the judicial authorities may, ***as an alternative to the measures laid down in paragraph 1***, make the continuation of the alleged unlawful acquisition, use or disclosure of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder.

Amendment 36

**Proposal for a directive
Article 10 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities have, in respect of the measures referred to in Article 9, the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves that a trade secret ***exists***, that the applicant is the ***legitimate*** trade secret holder and that the trade secret has been acquired unlawfully, that the trade

Amendment

1. Member States shall ensure that the competent judicial authorities have, in respect of the measures referred to in Article 9, the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves that ***the matter involved qualifies as*** a trade secret, that the applicant is the trade secret holder and that the trade secret has been acquired

secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent.

unlawfully, that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent.

Amendment 37

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial authorities shall be required to take into account the value of the trade secret, the measures taken to protect the trade secret, the conduct of the respondent in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including freedom of expression and information.

Amendment

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial authorities shall be required to take into account ***all relevant aspects of the case, such as*** the value of the trade secret, the measures taken to protect the trade secret, the conduct of the respondent in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including freedom of expression and information.

Amendment 38

Proposal for a directive Article 10 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the competent judicial authorities may make the interim measures referred to in Article 9 subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the respondent and, where appropriate, by any

Amendment

(Does not affect the English version).

other person affected by the measures.

Justification

(Does not affect the English version)

Amendment 39

Proposal for a directive

Article 11 – paragraph 1 – introductory wording

Text proposed by the Commission

1. Member States shall ensure that, where a judicial decision is taken finding an unlawful acquisition, use or disclosure of a trade secret, the competent judicial authorities may, at the request of the applicant order against the infringer:

Amendment

1. Member States shall ensure that, where a judicial decision is taken finding an unlawful acquisition, use or disclosure of a trade secret, the competent judicial authorities may, at the request of the applicant, order ***one or more of the following measures*** against the infringer:

Amendment 40

Proposal for a directive

Article 11 – paragraph 2 – point a

Text proposed by the Commission

(a) a declaration of infringement;

Amendment

deleted

Amendment 41

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that, in considering a request for the adoption of the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities take into account the value of the trade secret, the measures taken to protect the trade secret, the conduct of the infringer in acquiring, disclosing or using

Amendment

Member States shall ensure that, in considering a request for the adoption of the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities ***shall be required to take into account the specific circumstances of the case. This assessment shall include, where appropriate,*** the value of the trade secret,

of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including freedom of expression and information.

the measures taken to protect the trade secret, the conduct of the infringer in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including freedom of expression and information.

Amendment 42

Proposal for a directive Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission

When the competent authorities limit the **duration** of the measure referred to in point (a) of Article 11(1), **such duration shall** be sufficient to eliminate any commercial or economic advantage that the infringer could have derived from the unlawful acquisition, disclosure or use of the trade secret.

Amendment

Member states shall ensure that the competent authorities limit the **length** of the measure referred to in point (a) of Article 11(1) **accordingly, as to** be sufficient to eliminate any commercial or economic advantage that the infringer could have derived from the unlawful acquisition, disclosure or use of the trade secret .

Justification

If the defendant can no longer gain any commercial advantage from the misappropriation, the further extension of an injunction only serves the purpose of deterrence and sanction while in the meantime hindering competition and innovation.

Amendment 43

Proposal for a directive Article 12 – paragraph 3 – subparagraph 2

Text proposed by the Commission

When the pecuniary compensation is ordered instead of the order referred to in **point (a)** of Article 11(1), such pecuniary compensation shall not exceed the amount of royalties or fees which would have been due, had that person requested authorisation to use the trade secret in question, for the period of time for which use of the trade secret could have been prohibited.

Amendment

When the pecuniary compensation is ordered instead of the order referred to in **points (a) and (b)** of Article 11(1), such pecuniary compensation shall not exceed the amount of royalties or fees which would have been due, had that person requested authorisation to use the trade secret in question, for the period of time for which use of the trade secret could have been prohibited.

Amendment 44

**Proposal for a directive
Article 13 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages **commensurate** to the actual prejudice suffered.

Amendment

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages **appropriate** to the actual prejudice suffered **as a result of the infringement**.

In accordance with their national law and practice, Member States may restrict the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer when they act without intent.

Amendment 45

**Proposal for a directive
Article 14 – paragraph 3**

Text proposed by the Commission

3. In deciding whether to order a **publicity** measure and assessing its proportionality, the competent judicial authorities shall take into account the possible harm that such measure may cause to the privacy and reputation of the infringer, **whenever the infringer is a natural person, as well as the value of the trade secret**, the conduct of the infringer in acquiring, disclosing or using the trade secret, **the impact of the unlawful disclosure or use of the trade secret**, and the likelihood of further unlawful use or disclosure of the trade secret by the infringer.

Amendment

3. In deciding whether to order a measure **referred to in paragraph 1** and assessing its proportionality, the competent judicial authorities shall take into account **whether the information on the infringer would allow to identify a natural person and, if so, whether publication of that information would be justified, in particular in the light of the following criteria:** the possible harm that such measure may cause to the privacy and reputation of the infringer, the conduct of the infringer in acquiring, disclosing or using the trade secret and the likelihood of further unlawful use or disclosure of the trade secret by the infringer.

PROCEDURE

Title	Protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure			
References	COM(2013)0813 – C7-0431/2013 – 2013/0402(COD)			
Committee responsible Date announced in plenary	JURI 9.12.2013			
Opinion by Date announced in plenary	IMCO 9.12.2013			
Rapporteur Date appointed	Lara Comi 7.10.2014			
Discussed in committee	18.3.2014	5.11.2014	17.11.2014	3.12.2014
	21.1.2015	23.2.2015	16.3.2015	
Date adopted	24.3.2015			
Result of final vote	+: -: 0:	27 4 7		
Members present for the final vote	Dita Charanzová, Carlos Coelho, Sergio Gaetano Cofferati, Lara Comi, Daniel Dalton, Nicola Danti, Pascal Durand, Vicky Ford, Ildikó Gáll-Pelcz, Evelyne Gebhardt, Maria Grapini, Antanas Guoga, Sergio Gutiérrez Prieto, Liisa Jaakonsaari, Jiří Maštálka, Marlene Mizzi, Jiří			

	Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo
Substitutes present for the final vote	Roberta Metsola, Franz Obermayr, Adam Szejnfeld, Ulrike Trebesius, Sabine Verheyen, Inês Cristina Zuber
Substitutes under Rule 200(2) present for the final vote	Jonathan Arnott, Philippe De Backer, Ashley Fox, Andrey Novakov