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*Committee on Industry, Research and Energy*

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**2013/0402(COD)**

29.4.2015

## **OPINION**

of the Committee on Industry, Research and Energy

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: Michèle Rivasi

PA\_Legam

## SHORT JUSTIFICATION

Protection against unlawful acquisition, disclosure and use of trade secrets is key to allow a fair commercial environment for businesses. However, it is important to remember that the circulation of knowledge and information is also essential to the innovation and creation process. Enterprises are often more interested in exchanging trade secrets than in keeping them secret. Meanwhile, transparency and access to information is also necessary for informing important public policies such as environmental, health and consumer protection.

A proper balance needs to be found so as not to open the door to abusive claims of improper trade secrets acquisition or circulation and to avoid that information that should be shared and exchanged is kept secret through a too overbroad protection. To ensure this balance the rapporteur has proposed amending the Commission proposal along four important axis.

### **Clarifying the definitions and making the directive more precise**

The EU harmonizing of legal procedures and remedies against unlawful acquisition, disclosure and use of trade secrets need to go together with a clear understanding of the scope and definition of the matter at stake. This is all the more important since this directive will lead to the introduction of a new legal concept in most EU national laws. Too vague a definition of what can be a trade secret will create legal uncertainties and facilitate abuses of the notion by the most powerful economic players to the detriment of the smaller one and of society as a whole.

The rapporteur proposes to clarify the definition of what should be considered as trade secrets. It is not only essential to allow proper implementation of the directive but also because this new directive will serve as the only EU benchmark in the context of the negotiation of the TTIP agreement.

Trade secrets protection, although important, is not an intellectual property right (IPR). Therefore its application should not lead to the creation of new exclusive rights. The use of IPR terminology in the Commission proposal creates ambiguities and may impact legal interpretations in cases of litigation. This is why the rapporteur proposes to change some of the terms used to avoid language typically belonging to the IPR legal context.

### **Ensuring legitimate rights and access to information**

The scope of the directive is to ensure, within a business-to-business environment, an adequate level of defence against dishonest commercial practices.

However, the directive needs to establish, without any ambiguity, cases where the disclosure of information shall not fall under the scope of this directive. This is the case of information which disclosure is required by EU/national rules or public authorities within their mandate.

More generally protection of trade secrets shall not undermine legitimate public interest, such as consumer protection, the protection of workers, the protection of human, animal or plant life, the protection of the environment, the safeguard of fundamental rights, including freedom of expression and information, the prevention of unfair competition.

## **Guaranteeing mobility of employees**

Circulation of knowledge and skills is also what make industrial actors and research sectors dynamic and creative, as the Silicon Valley is proving it: this goes hand in hand with the mobility of the employees. It is important for innovation and professional development that skilled employees are able to move from company to company. Therefore the protection against unlawful acquisition, disclosure and use of trade secrets should not become an impediment to employees' mobility.

Several studies have demonstrated that regions/states enforcing strong non-compete agreements between employers and employees are subject to « brain drain » of the most high skilled workers, reduced investments and innovation.

This need to be taken into account when setting a limitation period to the measures, procedures and remedies provided for in this Directive: it would not be reasonable to burden employees with the limitation period longer than a year. Generally, there need to be a proper balance between the employees who create new ideas and the companies who provide the resources and the environment for the development of these ideas. The directive needs to reflect this balance.

## **Ensuring fair litigation processes in particular for small businesses**

As is the case for other litigations, larger business entities have the financial capacity to access justice that small and medium-size enterprises usually do not have. It is important to ensure that larger players do not abuse the trade secret claims to push potential competitors out of the market.

The protection of a trade secret does not create any proprietary rights but tackle the unlawful nature of the acquisition, disclosure and use. Therefore it is the person lawfully in control of the undisclosed information that should bear the burden of proof of the fact that this acquisition was indeed unlawful.

## **AMENDMENTS**

The Committee on Industry, Research and Energy 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 1**

*Text proposed by the Commission*

(1) Businesses and non- commercial research institutions invest in acquiring, developing and applying know-how and information, which is the currency of the

*Amendment*

(1) Businesses and non- commercial research institutions invest in acquiring, developing and applying know-how and information, which is the currency of the

knowledge economy. This investment in generating and applying intellectual capital determines their competitiveness in the market and therefore their returns to investment, which is the underlying motivation for business research and development. Businesses have recourse to different means to appropriate the results of their innovative activities when openness does not allow for the full exploitation of their research and innovation investments. Use of *formal* intellectual property rights such as patents, design rights or copyright is one of them. Another is to protect access and exploit the knowledge that is valuable to the entity and not *widely* known. Such know-how and business information, that is undisclosed and intended to remain confidential is referred to as a trade secret. Businesses, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right and use confidentiality as a business and research innovation management tool, covering a diversified range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers, business plans or market research and strategies. By protecting such a wide range of know-how and commercial information, whether as a complement or as an alternative to intellectual property rights, trade secrets allow the creator to derive profit from his/her creation and innovations and therefore are particularly important for research and development and innovative performance.

knowledge economy *and gives a competitive advantage*. This investment in generating and applying intellectual capital determines their competitiveness *and innovative performance* in the market and therefore their returns to investment, which is the underlying motivation for business research and development. Businesses have recourse to different means to appropriate the results of their innovative activities when openness does not allow for the full exploitation of their research and innovation investments. Use of intellectual property rights such as patents, design rights or copyright is one of them. Another is to protect access *to commercially valuable information* and exploit the knowledge that is valuable to the entity and not known *among, or readily accessible to, persons within the circles that normally deal with the kind of information in question or by other persons who might obtain economic value from its disclosure or use*. Such know-how and business information, that is undisclosed and intended to remain confidential is referred to as a trade secret. *Small and medium-sized enterprises (SMEs), especially, value and rely on trade secrets more, because the use of intellectual property rights tends to be expensive and SMEs often do not have sufficient specialised human and financial resources to manage and protect intellectual property rights*. Businesses, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right and use confidentiality as a business and research innovation management tool, covering a diversified range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers, business plans or market research and strategies. By protecting such a wide range of know-how and commercial information, whether as a complement or as an alternative to intellectual property rights, trade secrets

allow the creator to derive profit from his/her creation and innovations and therefore are particularly important for research and development and innovative performance.

## Amendment 2

### 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 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

*Amendment*

(2) Open innovation is ***a catalyst for new ideas to find their way to the market - meeting the needs of consumers and tackling societal challenges. It 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.*** Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the internal market. Such an environment conducive to intellectual creation and innovation ***and where employment mobility is ensured*** is also important for employment growth and improving competitiveness of the Union economy. Trade secrets ***have a role in protecting the exchange of knowledge between businesses and/or research institutions, within and across the borders of the internal market, in the context of research and development and innovation. The existing*** Union legal framework against unlawful acquisition, use or disclosure ***of trade secrets by third parties is fragmented in 28 different laws, which creates barriers to the effective functioning of the internal market.***

framework against their unlawful acquisition, use or disclosure *by third parties*.

### Amendment 3

#### Proposal for a directive

#### Recital 4

*Text proposed by the Commission*

(4) ***International efforts taken in the framework of the World Trade Organisation to address this problem led to the conclusion of the*** Agreement on trade-related aspects of intellectual property (the TRIPS Agreement). ***It*** contains, inter alia, provisions on the protection of trade secrets against their unlawful acquisition, use or disclosure by third parties, which are common international standards. All Member States, as well as the Union itself, are bound by this Agreement which was approved by Council Decision 94/800/EC<sup>5</sup>.

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<sup>5</sup> Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p.1).

*Amendment*

(4) ***The*** Agreement on trade-related aspects of intellectual property (the TRIPS Agreement) contains, inter alia, provisions on the protection of trade secrets against their unlawful acquisition, use or disclosure by third parties, which are common international standards. All Member States, as well as the Union itself, are bound by this Agreement which was approved by Council Decision 94/800/EC<sup>5</sup>. ***In order to protect trade secrets against misappropriation, some Member States have legislation in place, however some Member States have not defined trade secrets and do not have binding legislation against misappropriation of trade secrets, which creates gaps and barriers to the effectively functioning of the internal market. It is also appropriate to define at Union level the situations where the acquisition, use and disclosure of a trade secret is lawful or unlawful, and to limit the period of application of redress procedures, for this Directive to serve its purpose of consistent protection of trade secrets in the Union.***

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<sup>5</sup> Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p.1).

## Amendment 4

### 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 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.

#### *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 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. Such definition should therefore be constructed as to cover business information and ***undisclosed*** know-how where there is a legitimate interest in keeping confidential, ***a commercial value of this information because it is kept 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 ***and by competitors. The conditions establishing unlawful use or disclosure should not limit the use of acquired experience and know-how through honest practices for instance in the framework of a labour agreement or any other contractual relationship. This should ensure that labour mobility will not be endangered while at the same time ensuring adequate protection for trade secrets. This Directive is without prejudice to the autonomy of the social partners and their right to enter into collective agreements in accordance with national law, traditions and practices and while respecting the provisions of the Treaty.***



## Amendment 5

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(9) It is also important to identify the circumstances under which legal protection is justified. For this reason, it is necessary to establish the conduct and practices which are to be regarded as unlawful acquisition, use or disclosure of a trade secret. Disclosure by Union's institutions and bodies or national public authorities of business-related information they hold pursuant to the obligations of Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>6</sup> or to other rules on the access to documents should not be considered unlawful disclosure of a trade secret.

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<sup>6</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p.43).

#### *Amendment*

(9) It is also important to identify the circumstances under which legal protection is justified. For this reason, it is necessary to establish the conduct and practices which are to be regarded as unlawful acquisition, use or disclosure of a trade secret. Disclosure by Union's institutions and bodies or national public authorities of business-related information they hold pursuant to the obligations of Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>6</sup> or to other rules on the access to documents is not be considered unlawful disclosure of a trade secret. ***Similarly, the acquisition or disclosure of a trade secret by a public body, fulfilling its mandate in accordance with national or Union law, should not constitute unlawful use or disclosure. This should also be the case for ensuring the protection of a legitimate interest, including consumer protection, the protection of workers, the protection of health and the environment, the safeguard of fundamental rights, including freedom of expression and information, and the prevention of unfair competition.***

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<sup>6</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p.43).

## Amendment 6

**Proposal for a directive**  
**Recital 10**

*Text proposed by the Commission*

(10) In the interest of innovation and to foster competition, the provisions of this Directive should not create any exclusive right on the know-how or information protected as trade secrets. Thus, independent discovery of the same know-how and information remains possible and competitors of the trade secret holder are also free to reverse engineer any lawfully acquired product.

*Amendment*

(10) In the interest of innovation and to foster competition, the provisions of this Directive ***and its implementation*** should not create any exclusive right on the know-how or information protected as trade secrets. ***The provisions for protection of trade secrets conferred by this Directive do not constitute an intellectual property right and it should not be possible for them to be invoked solely in order to restrict competition.*** Thus, independent discovery of the same know-how and information remains possible and competitors of the trade secret holder are also free to reverse engineer any lawfully acquired product, ***as long as this is in line with honest commercial practices.***

**Amendment 7**

**Proposal for a directive**  
**Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) More and more frequently the marketing of many products, in particular in the context of procurement procedures, is contingent on the notification to the regulatory and administrative authorities of confidential data, some of it obtained by means of tests which are very costly to set up. The disclosure of some or all of the information in question by the authorities and its acquisition by third parties should not lead to it being used unfairly on the market.***

*Justification*

*Lawful acquisition, use or disclosure are not systematically linked and can, in practice, be followed by unlawful reuse or re-disclosure. If the right to information outweighs to a*

*disproportionate extent the need to protect trade secrets, firms will be reluctant to divulge their confidential information to government institutions and the number of improper requests for access will increase.*

## **Amendment 8**

### **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, **by having in particular a deterrent effect against the unlawful acquisition, use and disclosure of a trade secret**, without jeopardising other objectives and principles of public interest, **such as consumer protection, health and environment protection**. In this respect, the measures and remedies ensure that competent judicial authorities account for **all relevant circumstances 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 **use or disclosure**. 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 9**

### **Proposal for a directive**

#### **Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

**(11a) With the introduction and implementation of a uniform definition of trade secrets, and with the introduction**

*and implementation of uniform rules for the protection of trade secrets within the internal market, other measures that directly or indirectly could restrict the sharing and use of knowledge and the hiring and mobility of labour, should respect the principle of proportionality in the interest of innovation and free competition.*

## **Amendment 10**

### **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 11**

### **Proposal for a directive Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) The increased use of online web services to conduct business and research, storing more confidential data in virtual storage places, increased use of e-commerce and digitalization as a whole calls for harmonized legislation across the Union, which would protect misappropriated use of trade secrets, which in turn would ensure trust and protection among businesses and consumers and promote the formation of the Digital Single Market, which is one of the foundations for an effectively functioning internal market.***

## **Amendment 12**

### **Proposal for a directive Recital 13**

*Text proposed by the Commission*

*Amendment*

(13) In the interest of legal 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 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.

(13) In the interest of ***preserving a smooth functioning of the internal market in research and innovation***, of legal 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 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.

### *Justification*

*The practical impact of a limitation period of two years is limited given that businesses usually deal with misappropriation of trade secrets quickly by seeking interim measures. However, it is important that a strict limitation period is applied to avoid abuses that would lead to hindering innovation and delaying access to the internal market.*

## Amendment 13

### Proposal for a directive

#### Recital 14

##### *Text proposed by the Commission*

(14) The prospect of losing the confidentiality of a trade secret during litigation procedures often deters legitimate trade secret holders from instituting proceedings to defend their trade secrets, thus jeopardising the effectiveness of the measures and remedies provided for. For this reason, it is necessary to establish, **subject to** appropriate safeguards ensuring the right to a fair trial, specific requirements aimed at protecting the confidentiality of the litigated trade secret in the course of legal proceedings instituted for its defence. These should include the possibility to restrict access to evidence or hearings, or to publish only the non-confidential elements of judicial decisions. Such protection should remain in force after the legal proceedings have ended for as long as the information covered by the trade secret is not in the public domain.

##### *Amendment*

(14) The prospect of losing the confidentiality of a trade secret during litigation procedures often deters legitimate trade secret holders from instituting proceedings to defend their trade secrets, thus jeopardising the effectiveness of the measures and remedies provided for. For this reason, it is necessary to establish **a balance between** appropriate safeguards ensuring the right to a fair trial **and** specific requirements aimed at protecting the confidentiality of the litigated trade secret in the course of legal proceedings instituted for its defence. These should include the possibility to restrict access to evidence or hearings **for persons not connected with the parties**, or to publish only the non-confidential elements of judicial decisions. **To ensure sufficient access to information, in cases where access is restricted, at least one person from each party and their respective lawyer should have access to evidence or hearings.** Such protection should remain in force after the legal proceedings have ended for as long as the information covered by the trade secret is not in the public domain.

##### *Justification*

*Makes it clear that, in order to respect the right which parties have to a fair trial, they must be able to participate with the benefit of the necessary information and that this requirement should be brought into balance with the need to protect the confidentiality of trade secrets to which proceedings relate.*

## Amendment 14

### 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**

**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

*Amendment*

(15) Unlawful acquisition, ***use or disclosure*** 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*

(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 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 ***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.

that cannot be attributed to the respondent.

### *Justification*

*if the defendant no longer gains a 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 16**

### **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 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.

##### *Amendment*

(17) A trade secret may be unlawfully used to design, manufacture, *develop* or market *services or* 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 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 by charitable organisations.



## *Justification*

*There is a need to clarify that the misappropriation of trade secrets to develop services is covered by this Directive*

### **Amendment 17**

#### **Proposal for a directive**

#### **Recital 19**

##### *Text proposed by the Commission*

(19) In order to avoid that a person who knowingly, or with reasonable grounds for knowing, unlawfully acquires, uses or discloses a trade secret benefit from such conduct and to ensure that the injured trade secret holder, to the extent possible, is placed in the position in which he or she would have been had that conduct not taken place, it is necessary to provide for adequate compensation of the prejudice suffered as a result of the unlawful conduct. The amount of damages awarded to the injured holder of the trade secret should take account of all appropriate factors, such as loss of earnings incurred by the trade secret holder or unfair profits made by the infringer and, ***where appropriate***, any moral prejudice caused to the trade secret holder. As an alternative, for example where, considering the intangible nature of trade secrets, it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as the royalties or fees which would have been due had the infringer requested authorisation to use the trade secret in question. The aim is not to introduce an obligation to provide for punitive damages, but to ensure compensation based on an objective criterion while taking account of the expenses incurred by the holder of the trade secret, such as the costs of identification and research.

##### *Amendment*

(19) In order to avoid that a person who knowingly, or with reasonable grounds for knowing, unlawfully acquires, uses or discloses a trade secret benefit from such conduct and to ensure that the injured trade secret holder, to the extent possible, is placed in the position in which he or she would have been had that conduct not taken place, it is necessary to provide for adequate compensation of the prejudice suffered as a result of the unlawful conduct. The amount of damages awarded to the injured holder of the trade secret should take account of all appropriate factors, such as loss of earnings incurred by the trade secret holder or unfair profits made by the infringer and, ***when the trade secret holder is a natural person***, any moral prejudice caused to the trade secret holder. As an alternative, for example where, considering the intangible nature of trade secrets, it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as the royalties or fees which would have been due had the infringer requested authorisation to use the trade secret in question. The aim is not to introduce an obligation to provide for punitive damages, but to ensure compensation based on an objective criterion while taking account of the expenses incurred by the holder of the trade secret, such as the costs of identification and research.

## Justification

*There is a need to clarify that only natural persons can claim damages for moral prejudice*

### Amendment 18

#### Proposal for a directive

##### Recital 20

###### *Text proposed by the Commission*

(20) To act as a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions, including where appropriate through prominent advertising, in cases concerning the unlawful acquisition, use or disclosure of trade secrets, as long as such publication does not result in the disclosure of the trade secret nor disproportionately affect the privacy and reputation of natural persons.

###### *Amendment*

(20) To act as a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions, including where appropriate through prominent advertising, in cases concerning the unlawful acquisition, use or disclosure of trade secrets, as long as such publication does not result in the disclosure of the trade secret nor disproportionately affect the privacy and reputation of natural persons. ***There is also a necessity to raise awareness, especially for SMEs, of the availability of redress and remedies in cases of unlawful acquisition, use or disclosure of trade secrets.***

### Amendment 19

#### Proposal for a directive

##### Recital 22

###### *Text proposed by the Commission*

(22) In order to facilitate the uniform application of the measures for the protection of trade secrets, it is appropriate to ***provide for*** systems of cooperation and ***the*** exchange of information ***as*** between Member States, on the one hand, and between the Member States and the Commission on the other, ***in particular by creating a network of correspondents designated by Member States***. In addition, in order to review whether these measures fulfil their intended objective, the Commission, ***assisted, as appropriate, by***

###### *Amendment*

(22) In order to facilitate the uniform application of the measures for the protection of trade secrets, it is appropriate to ***use existing*** systems of cooperation and exchange of information between Member States, on the one hand, and between the Member States and the Commission on the other. In addition, in order to review whether these measures fulfil their intended objective, the Commission should examine the application of this Directive and the effectiveness of the national measures taken.

***the European Observatory on the Infringements of Intellectual Property Rights***, should examine the application of this Directive and the effectiveness of the national measures taken.

*Justification*

*As a trade secret is not considered as an Intellectual property right and is protected in a context of unfair competition, the EOIIPR does not seem the appropriate body to assist the Commission. In addition, Member states and the European Commission should use existing networks of cooperation and information and not create new ones, in order to limit administrative burden*

**Amendment 20**

**Proposal for a directive**

**Recital 23**

*Text proposed by the Commission*

(23) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to respect private and family life, the right to the protection of personal data, the freedom of expression and information, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to good administration, access to file and preservation of secrecy of business, the right to an effective remedy and to a fair trial and right of defence.

*Amendment*

(23) ***The implementation of*** this Directive ***should ensure that it*** respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to respect private and family life, the right to the protection of personal data, the freedom of expression and information, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to good administration, access to file and preservation of secrecy of business, the right to an effective remedy and to a fair trial and right of defence. ***Thus the provisions of this Directive should not apply, if the disclosure of information is in the overriding public interest or can be considered as a fundamental right.***

**Amendment 21**

**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, or create barriers to labour mobility** in a manner contrary to that Treaty.

**Amendment 22**

**Proposal for a directive  
Recital 27 a (new)**

*Text proposed by the Commission*

*Amendment*

***(27a) This Directive should not affect the application of the freedom of movement for workers and the freedom of establishment. It should also not affect the right of workers' representatives to the acquisition and disclosure of trade secrets in the context of the exercise of their rights to information, consultation and participation in accordance with Union and national law and practises.***

**Amendment 23**

**Proposal for a directive  
Recital 28**

*Text proposed by the Commission*

*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 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

(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

and of the Council<sup>8</sup> and the scope of this Directive overlap, this Directive takes precedence as *lex specialis*.

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 Council<sup>8</sup> and the scope of this Directive overlap, this Directive takes precedence as *lex specialis*.

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<sup>8</sup> 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).

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<sup>8</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).

## Amendment 24

### 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, disclosure and use of ***undisclosed know-how and business information*** (trade secrets), ***without the authorization of the natural or legal persons that are in lawful control of such information, and in a manner that is contrary to honest commercial practices. The Member States may provide for more far-reaching provisions, provided that compliance with Articles 4 and 5, Article 6(1), Article 7, the second subparagraph of Article 8(1), Article 8(3) and (4), Article 9(2), Articles 10 and 12 and Article 14(3) is ensured.***

## Amendment 25

### Proposal for a directive Article 1 – paragraph 1 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***Any information of which disclosure is required by Union or national rules or by public authorities within the context of***

*their mandate shall not fall within the scope of this Directive.*

*Justification*

*This clarification of scope is necessary in order to avoid that companies circumvent obligations regarding disclosure of information that is established by law in the Member States or in the Union through claim of "trade secret".*

**Amendment 26**

**Proposal for a directive  
Article 1 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*This Directive shall be without prejudice to the autonomy of the social partners and their right to enter into collective agreements in accordance with national law, traditions and practices and while respecting the provisions of the Treaty.*

**Amendment 27**

**Proposal for a directive  
Article 2 – paragraph 1 – point 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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

**Amendment 28**

**Proposal for a directive  
Article 2 – paragraph 1 – point 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) is secret in the sense that it is not, as a body or in the precise configuration and

(a) is secret in the sense that it is not, as a body or in the precise configuration and

assembly of its components, **generally** known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

assembly of its components, known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

## Amendment 29

### Proposal for a directive

#### Article 2 – paragraph 1 – point 1 – point b

(b) has commercial value because it is secret;

(b) has **actual or potential significant** commercial value because it is secret **and because its disclosure would be significantly detrimental to the legitimate economic interest of the person lawfully controlling it;**

## Amendment 30

### 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 **and demonstrable** steps by the person lawfully in control of the information, to keep it secret, **through means (including technical and contractual) that can be verifiable by the relevant competent judicial authorities.**

## Amendment 31

### Proposal for a directive

#### Article 2 – paragraph 1 – point 2

*Text proposed by the Commission*

(2) 'trade secret holder' means any **natural or legal person lawfully controlling a**

*Amendment*

(2) 'trade secret holder' means any **registered market operator legally established as being in control of** a trade

trade secret;

secret;

### *Justification*

*Control over a trade secret must have been properly established in law, so as to ensure that there are no 'secret' trade secrets.*

## **Amendment 32**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 3**

##### *Text proposed by the Commission*

(3) '**infringer**' means any natural or legal person who has unlawfully acquired, used or disclosed trade secrets;

##### *Amendment*

(3) '**offender**' means any natural or legal person who, **either directly or through a third party**, has unlawfully acquired, used or disclosed trade secrets, **in a manner contrary to honest commercial practices**;

## **Amendment 33**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point 4**

##### *Text proposed by the Commission*

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

##### *Amendment*

(4) '**unlawful goods**' means **products or services** whose design, **characteristics**, manufacturing process or marketing **are demonstrated to have benefited** from trade secrets unlawfully acquired, used or disclosed.

## **Amendment 34**

### **Proposal for a directive**

#### **Article 3 – paragraph 1**

##### *Text proposed by the Commission*

1. Member States shall ensure that trade secret **holders** are entitled to apply for the measures, procedures and remedies provided for in this Directive in order to

##### *Amendment*

1. Member States shall ensure that **natural or legal persons lawfully controlling a trade secret** are entitled to apply for the measures, procedures and remedies



**prevent, or** obtain redress for, the unlawful acquisition, use or disclosure of a trade secret.

provided for in this Directive in order to obtain redress for, the unlawful acquisition, use or disclosure of a trade secret.

*Justification*

*See previous AM on the definition of "holder". Using "holder" is misleading and unnecessary since it leads to the notion of ownership of intellectual property rights, which is not what trade secrets are. Using the text the terms "any natural or legal person lawfully controlling a trade secret" is more accurate, and we propose to use these terms throughout the text.*

**Amendment 35**

**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 intentionally by:

*Justification*

*In the context of this proposal the term "gross negligence" does not bring clarity on how it will be enforced in a uniform manner by the judicial competent authorities*

**Amendment 36**

**Proposal for a directive**

**Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

*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 or from which the trade secret can be deduced;

(a) unauthorised access to, copy **or appropriation** of any **trade secret, whether in the form of** 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 37

#### Proposal for a directive Article 3 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

**(b) theft;**

***deleted***

### Amendment 38

#### Proposal for a directive Article 3 – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

**(c) bribery;**

***deleted***

### Amendment 39

#### Proposal for a directive Article 3 – paragraph 2 – point d

*Text proposed by the Commission*

*Amendment*

**(d) deception;**

***deleted***

### Amendment 40

#### Proposal for a directive Article 3 – paragraph 2 – point e

*Text proposed by the Commission*

*Amendment*

**(e) breach or inducement to breach *a confidentiality* agreement *or any other duty* to maintain *secrecy*;**

**(e) breach or inducement to breach *an* agreement to maintain *confidentiality*;**

### Amendment 41

#### Proposal for a directive Article 3 – paragraph 2 – point f

*Text proposed by the Commission*

*Amendment*

(f) **any other** conduct **which, under the circumstances, is** considered contrary to honest commercial practices.

(f) conduct considered contrary to honest commercial practices

## Amendment 42

### 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 **natural or legal person in lawful control of a** trade secret, intentionally **and with the aim of acquiring an economic gain or advantage or of causing economic detriment to the person in lawful control of it** or with gross negligence, by a person who is found to meet any of the following conditions:

#### *Justification*

*The intention to engage in a dishonest commercial practice, as opposed to making use of a legitimate public interest to access to information, must be inherent to the definition of when acquisition is unlawful.*

## Amendment 43

### Proposal for a directive

#### Article 3 – paragraph 3 – point a

*Text proposed by the Commission*

(a) has acquired the trade secret unlawfully;

*Amendment*

(a) has acquired **and used or disclosed** the trade secret unlawfully;

## Amendment 44

### Proposal for a directive

#### Article 3 – paragraph 3 – point b

*Text proposed by the Commission*

*Amendment*

(b) is in breach of a confidentiality agreement or any other duty to *maintain secrecy* of the trade secret;

(b) is in breach of a *legally valid* confidentiality agreement *under national or Union law* or any other duty to *limit the use or disclosure* of the trade secret;

#### **Amendment 45**

##### **Proposal for a directive Article 3 – paragraph 3 – point c**

*Text proposed by the Commission*

*Amendment*

(c) is in breach of a contractual *or any other* duty to limit the use of the trade secret.

(c) is in breach of a *legally valid* contractual duty to limit the use *or disclosure* of the trade secret.

#### **Amendment 46**

##### **Proposal for a directive Article 3 – paragraph 3 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) has acquired the trade secret lawfully but uses or discloses it in a manner contrary to honest commercial practices and likely to harm the commercial interests of the person in lawful control of a trade secret and/or the smooth functioning of the internal market.*

*Justification*

*Lawful acquisition, use or disclosure are not systematically linked and can, in practice, be followed by unlawful (re)use or (re)disclosure.*

#### **Amendment 47**

##### **Proposal for a directive Article 3 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*3a. The obligations laid down in paragraph 3 may not arbitrarily limit the use of experience acquired honestly through employment or some other contractual relationship. The rules on*

***collective agreements and national labour law systems shall not be affected.***

*Justification*

*The use of professional experience must not be arbitrarily restricted, so as not to create an obstacle to worker mobility.*

**Amendment 48**

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

*Amendment*

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

*Justification*

*Holders of trade secrets must be able to take action against any person who has received information which was unlawfully obtained.*

**Amendment 49**

**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 acquired, used or disclosed unlawfully within the***

*meaning of paragraph 3.*

*Justification*

*Prior knowledge must be the criterion which determines whether the conduct of passive recipients of information is unlawful.*

**Amendment 50**

**Proposal for a directive**

**Article 4 – paragraph 1 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

1. Trade secrets shall ***not*** be considered ***to cover information*** obtained ***as a result of:***

*Justification*

*Intellectual property rights should be registered in another form than trade secrets, because, as is clear from the definition, both existing and potential patents, industrial designs and copyright should not be subject to trade secrecy.*

**Amendment 51**

**Proposal for a directive**

**Article 4 – paragraph 1 – point -a (new)**

*Text proposed by the Commission*

*Amendment*

***(-a) a commercial contract between the person who is lawfully in control of the trade secret and an acquirer;***

*Justification*

*The most common way of acquisition of trade secret is the simple commercial, way as confirmed by the impact assessment study: 60 % of the enterprises exchange trade secret.*

**Amendment 52**

**Proposal for a directive**

**Article 4 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) independent *discovery* or *creation*;

(a) independent ***technological discoveries and designs*** or ***independent manufacture of goods with properties that are identical or similar to those placed on the market by persons in lawful control of a trade secret***;

*Justification*

*If trade secrecy is restricted solely to market- and trade-related activities and elements of existing or potential intellectual property are excluded from the definition, no independent discovery or innovation can be the subject of an accusation of trade secret infringement.*

### **Amendment 53**

#### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(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***;

(b) observation, study, disassembly or test of a product or object that has been made available to the public or that is lawfully in the possession of ***a natural person or market operator with access to independent technological discoveries and designs and goods manufactured on the basis thereof***;

*Justification*

*The fact that one business holds a trade secret should not hinder the research and development activities of another business where technological progress is concerned.*

### **Amendment 54**

#### **Proposal for a directive**

#### **Article 4 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) exercise of the right of workers representatives to information ***and*** consultation in accordance with Union and national law and/or practices;

(c) exercise of the right of workers ***or workers'*** representatives to information, consultation ***and participation*** in accordance with Union and national law

and/or practices;

#### **Amendment 55**

##### **Proposal for a directive Article 4 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) required or authorised by public institutions fulfilling their mandate in accordance with national or Union law***

#### **Amendment 56**

##### **Proposal for a directive Article 4 – paragraph 1 – point c b (new)**

*Text proposed by the Commission*

*Amendment*

***(cb) the knowledge, qualifications and skills gained by employees in previous employment. Obligations of contracts and other actions that may limit the use of such knowledge shall comply with the principle of proportionality in the interest of innovation and free competition.***

#### **Amendment 57**

##### **Proposal for a directive Article 4 – paragraph 1 – point c c (new)**

*Text proposed by the Commission*

*Amendment*

***(cc) performance of the accountability requirements imposed on boards of directors or supervisory boards.***

#### **Amendment 58**

##### **Proposal for a directive Article 4 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

***2. Member States shall ensure that there***

***2. The acquisition, use and disclosure of***



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:

*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:

#### Amendment 59

##### Proposal for a directive Article 4 – paragraph 2 – point a

*Text proposed by the Commission*

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

*Amendment*

(a) for making legitimate use of the right to freedom of expression and information *as reflected in Article 11 of the Charter of Fundamental Rights of the European Union*;

#### Amendment 60

##### Proposal for a directive Article 4 – paragraph 2 – point b

*Text proposed by the Commission*

(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*;

*Amendment*

(b) the purpose of revealing an applicant's misconduct, wrongdoing or illegal activity *in an appropriate way*, provided that the *accused, without being negligent, could assume that* the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation;

#### Amendment 61

##### Proposal for a directive Article 4 – paragraph 2 – point b a (new)

*Text proposed by the Commission*

*Amendment*

*(ba) when fulfilling the terms of the employment contract of workers;*

## Amendment 62

### Proposal for a directive

#### Article 4 – paragraph 2 – point e

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 63

### Proposal for a directive

#### Article 4 – paragraph 2 – point e a (new)

*Text proposed by the Commission*

*Amendment*

***(ea) for the purpose of protecting public order, including the protection of human, animal or plant life or health or in order to avoid serious prejudice to the environment.***

*Justification*

*In order to avoid uncertainty between primacy of law, access to information for the aim of ensuring a high level of social and environmental protection must clearly be established as lawful acquisition.*

## Amendment 64

### Proposal for a directive

#### Article 4 – paragraph 2 – point e b (new)

*Text proposed by the Commission*

*Amendment*

***(eb) disclosure of a trade secret to members of boards of directors or supervisory boards of non-listed companies in the performance of accountability requirements;***

## Amendment 65

### Proposal for a directive

#### Article 4 – paragraph 2 – point e c (new)

*Text proposed by the Commission*

*Amendment*

***(ec) the trade secret is requested and/or disclosed by a public institution in accordance with its mandate, as required or allowed by national or Union law.***

*Justification*

*Enterprises should not be able to oppose the claim of 'trade secret' when confronted with requests for information that are required by law and public institutions in the fulfillment of their mandate. Many examples of such practice exist and often public authorities or institutions, especially at local level, do not have the capacity to respond to the refusal of disclosure of information.*

### **Amendment 66**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) is proportionate;

(a) is proportionate ***to the economic detriment incurred by the trade secret holder;***

### **Amendment 67**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

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

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

### **Amendment 68**

#### **Proposal for a directive**

#### **Article 6 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) provides for safeguards against their

(c) provides for safeguards against their

abuse.

abuse, **which ensure compensation of defendants in the event of abusive or wrongful accusation.**

## Amendment 69

### Proposal for a directive

#### Article 6 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

**(ca) ensures that the burden of proof that the trade secret was unlawfully acquired is borne by the person lawfully in control of the trade secret and that none of the exceptions mentioned in Article 4 apply.**

#### *Justification*

*Protection of trade secrets does not create any proprietary rights, therefore the protection is against the unlawful nature of the acquisition. This means that the person lawfully in control of the undisclosed information should bear the burden of proof of the fact that this acquisition was indeed unlawful, and no exception applies. If not, this person would de facto enjoy a proprietary right.*

## Amendment 70

### Proposal for a directive

#### Article 6 – paragraph 2 – subparagraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that where competent judicial authorities determine that a claim concerning the unlawful acquisition, disclosure or use of a trade secret is **manifestly** unfounded and the applicant is found to have initiated the legal proceedings in bad faith with the purpose of unfairly delaying or restricting the respondent's access to the market or otherwise intimidating or harassing the respondent, such competent judicial authorities shall be entitled to take the following measures:

Member States shall ensure that where competent judicial authorities determine that a claim concerning the unlawful acquisition, disclosure or use of a trade secret is unfounded and the applicant is found to have initiated the legal proceedings in bad faith with the purpose of unfairly delaying or restricting the respondent's access to the market or otherwise intimidating or harassing the respondent, **or of preventing the disclosure of information of public interest**, such competent judicial authorities shall be entitled to take the following measures:

### *Justification*

*Measures to sanction unfound claim shall apply to all cases (as outlined in article 4) where the acquisition, disclosure or use is deemed lawful.*

### **Amendment 71**

#### **Proposal for a directive**

#### **Article 6 – paragraph 2 – subparagraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) provide for full compensation for economic damage and losses incurred if any, as well as for potential moral prejudice to the alleged unlawful accessor, acquirer or user of trade secrets.***

### *Justification*

*Proportionate compensation must be ensured for the wrongfully accused.*

### **Amendment 72**

#### **Proposal for a directive**

#### **Article 7**

*Text proposed by the Commission*

*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 ***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.

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within 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 73**

#### **Proposal for a directive**

#### **Article 7 - paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States shall be entitled to lay down rules determining the circumstances under which the limitation period is interrupted or suspended.***

#### **Amendment 74**

##### **Proposal for a directive**

##### **Article 8 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

1. 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.

1. Member States shall ensure that the parties, their 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 ***which the competent judicial authorities have identified as confidential after consultation of the parties and*** of which they have become aware as a result of such participation or access.

#### **Amendment 75**

##### **Proposal for a directive**

##### **Article 8 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

The obligation referred to in the first subparagraph shall ***continue to apply until after the end of the legal proceedings, except*** in any of the following circumstances:

#### **Amendment 76**

##### **Proposal for a directive**

##### **Article 8 – paragraph 1 - point a**

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

**Amendment 77**

**Proposal for a directive  
Article 8 – paragraph 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, their respective lawyer or representative in the proceedings and where relevant their experts, and court officials have full access to such documents;***

**Amendment 78**

**Proposal for a directive  
Article 8 – paragraph 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 may be disclosed, and their corresponding records or transcript ***provided that each party, their respective lawyer or representative in the proceedings and where relevant their experts, and court officials are given full access to such hearing, 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 ***one representative of each party and*** the legal representatives of the parties and authorised experts subject to the confidentiality obligation referred to in

paragraph 1;

## Amendment 79

### Proposal for a directive

#### Article 8 – paragraph 2 - point c

*Text proposed by the Commission*

(c) to make available a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed.

*Amendment*

(c) to make **publicly** available a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed.

## Amendment 80

### Proposal for a directive

#### Article 8 – paragraph 2 - subparagraph 3

*Text proposed by the Commission*

***Where, because of the need to protect a trade secret or an alleged trade secret and pursuant to point (a) of the second subparagraph of this paragraph, the competent judicial authority decides that evidence lawfully in control of a party shall not be disclosed to the other party and where such evidence is material for the outcome of the litigation, the judicial authority may nevertheless authorise the disclosure of that information to the legal representatives of the other party and, where appropriate, to authorised experts subject to the confidentiality obligation referred to in paragraph 1.***

*Amendment*

***deleted***

## Amendment 81

### 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 the application referred to in paragraph 2 and assessing its proportionality, the competent judicial authorities shall take into account ***the need to ensure the rights 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.

*Justification*

*Protection of trade secrets during legal proceedings must not be at the cost of a fair trial.*

**Amendment 82**

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

*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 ***the know-how or business information involved qualifies as*** a trade secret, that the applicant is the trade secret holder and that the trade secret has been acquired unlawfully, ***and*** that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is ***expected***.

**Amendment 83**

**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 the ***specific circumstances of the case. This assessment shall include, where appropriate, the*** value of the trade secret, the measures taken to protect the trade secret, ***the intentionality of the respondent in acquiring, disclosing or using 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 84**

**Proposal for a directive  
Article 10 – paragraph 3 – point a**

*Text proposed by the Commission*

(a) the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority, within a reasonable period determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer;

*Amendment*

(a) the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority, within a reasonable period determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer, ***commencing on the date of the ruling by the judicial authority;***

### *Justification*

*The period for which interim measures would apply has to be determined by reference to a specified starting date in order to provide legal certainty.*

### **Amendment 85**

#### **Proposal for a directive**

#### **Article 10 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. Once the competent judicial authorities are satisfied that a trade secret exists, that the applicant is the legitimate trade secret holder and that an unlawful acquisition, use or disclosure of the trade secret is imminent, the interim precautionary measures referred to in Article 9 shall apply and no other measures provided for in other Directives shall apply.***

### *Justification*

*Article 9 on the Interim and precautionary measures shall apply to cases involving a trade secret. The aim of the amendment is to clarify that these provisions are exclusively stand-alone and separate from the measures contemplated in the Enforcement of Intellectual Property Rights Directive 2004/48/EC, to avoid confusion and misinterpretation, and to provide the necessary safeguards so that no Member State or Court would apply the measures of the Enforcement of IPRs Directive to a situation involving a trade secret once this directive is implemented.*

### **Amendment 86**

#### **Proposal for a directive**

#### **Article 11 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*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 against the infringer:

1. Member States shall ensure that, where a ***final*** 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 87

### Proposal for a directive

#### Article 11 – paragraph 1 - point -a (new)

*Text proposed by the Commission*

*Amendment*

*(-a) a declaration of unlawful access, disclosure or use;*

## Amendment 88

### Proposal for a directive

#### Article 11 – paragraph 1 - point c a (new)

*Text proposed by the Commission*

*Amendment*

*(ca) the destruction of all or part of any physical and/or electronic media containing or implementing the trade secret or, where appropriate, the delivery to the applicant of all or part of physical and/or electronic media.*

## Amendment 89

### Proposal for a directive

#### Article 11 – paragraph 2 - point a

*Text proposed by the Commission*

*Amendment*

*(a) a declaration of infringement;*

*deleted*

## Amendment 90

### Proposal for a directive

#### Article 11 – paragraph 2 - point c

*Text proposed by the Commission*

*Amendment*

(c) depriving the infringing goods of *their infringing* quality;

(c) depriving the infringing goods of *the* quality *that derived from the unlawful use of the trade secret*;

## Amendment 91

### Proposal for a directive

#### Article 11 – paragraph 2 - point d

*Text proposed by the Commission*

**(d) *destruction of the infringing goods or, where appropriate, their withdrawal from the market, provided that such action does not undermine the protection of the trade secret in question;***

*Amendment*

**(d) withdrawal *of the unlawful goods* from the market *and their distribution to charitable organisations under conditions to be determined by the judicial authorities aimed at ensuring that the goods in question do not re-enter the market* and provided that such action does not undermine the protection of the trade secret in question;**

## **Amendment 92**

### **Proposal for a directive Article 11 – paragraph 2 - point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) as last resort, destruction of the goods;***

## **Amendment 93**

### **Proposal for a directive Article 11 – paragraph 2 - point e**

*Text proposed by the Commission*

*Amendment*

***(e) the destruction of all or part of any document, object, material, substance or electronic file containing or implementing the trade secret or, where appropriate, the delivery up to the trade secret holder of all or part of those documents, objects, materials, substances and electronic files.***

***deleted***

## **Amendment 94**

### **Proposal for a directive Article 11 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

***3. Member States shall ensure that, when ordering the withdrawal of the infringing goods from the market, the judicial***

***deleted***

*authorities may order, at the request of the trade secret holder, that the goods be delivered up to holder or to charitable organisations under conditions to be determined by the judicial authorities aimed at ensuring that the goods in question do not re-enter the market.*

## Amendment 95

### Proposal for a directive

#### Article 11 – paragraph 3 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*When considering a request for corrective measures, the seriousness of the infringement, the remedies to be imposed, and the interests of third parties shall be weighed up appropriately as determined by the principle of proportionality.*

*Justification*

*It should be made clear that measures taken by judicial authorities must be based on the proportionality principle.*

## Amendment 96

### Proposal for a directive

#### Article 12 - paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

1. 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 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

1. 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 ***all relevant aspects of the case, such as*** the value of the trade secret, the measures taken to protect the trade secret, ***the intentionality of the infringer in acquiring, disclosing or using 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

parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including freedom of expression and information.

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 97

### 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** duration of the measure referred to in point (a) of Article 11(1), **accordingly, so as to ensure that it is** 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 **and that it avoids the creation of unjustified obstacles to fair competition, innovation and labour mobility.**

## Amendment 98

### Proposal for a directive Article 12 - paragraph 2

*Text proposed by the Commission*

2. Member States shall ensure that the measures referred to in *in* point (a) of Article 11(1) are revoked or otherwise cease to have effect, upon request of the respondent if in the meantime the information in question no longer fulfils the conditions of point (1) of Article 2 for reasons that cannot be attributed to the respondent.

*Amendment*

2. Member States shall ensure that the measures referred to in point (a) **and (b)** of Article 11(1) are revoked or otherwise cease to have effect, upon request of the respondent if in the meantime the information in question no longer fulfils the conditions of point (1) of Article 2 for reasons that cannot be attributed to the respondent.

## Amendment 99

### Proposal for a directive Article 12 - paragraph 3 - point a

*Text proposed by the Commission*

(a) the person concerned *originally acquired knowledge* of the trade secret *in good faith and fulfils the conditions of Article 3(4)*;

*Amendment*

(a) the person concerned *at the time of use or disclosure neither knew nor had reason, under the circumstances, to know that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully*;

## Amendment 100

### 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 point (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 101

### 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

*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 commensurate to the actual prejudice suffered.

damages commensurate to the actual prejudice suffered *as a result of the unlawful access to, disclosure or use of the trade secret.*

## Amendment 102

### Proposal for a directive Article 13 - paragraph 1 - subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*In accordance with their national law and practice, Member States shall 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. This option also applies when unlawful acquisition, use and disclosure of trade secrets occurs after the employment of an employee has terminated.*

## Amendment 103

### Proposal for a directive Article 13 - paragraph 2

*Text proposed by the Commission*

*Amendment*

2. When setting the damages, the competent judicial authorities shall take into account all **appropriate** factors, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the trade secret holder by the unlawful acquisition, use or disclosure of the trade secret.

2. When setting the damages, the competent judicial authorities shall take into account all **relevant** factors, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the trade secret holder by the unlawful acquisition, use or disclosure of the trade secret.

## Amendment 104

### Proposal for a directive Article 17 – paragraph 1

*Text proposed by the Commission*

1. By XX XX 20XX [three years after the end of the transposition period], the European ***Union Trade Marks and Designs Agency, in the context of the activities of the European Observatory on Infringements of Intellectual Property Rights***, shall prepare an initial report on the litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets pursuant to the application of this Directive.

*Amendment*

1. By XX XX 20XX [three years after the end of the transposition period], the European ***Commission*** shall prepare an initial report on the litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets pursuant to the application of this Directive.

*Justification*

*As a trade secret is not considered as an Intellectual property right and is protected in a context of unfair competition, the EOIPR does not seem the appropriate body to assist the Commission*

**Amendment 105**

**Proposal for a directive  
Article 17 – paragraph 2**

*Text proposed by the Commission*

2. By XX XX 20XX [four years after the end of the transposition period], the Commission shall draw up an intermediate report on the application of this Directive and submit it to the European Parliament and the Council. This report shall take due account of the report ***prepared by the European Observatory on Infringements of Intellectual Property Rights***.

*Amendment*

2. By XX XX 20XX [four years after the end of the transposition period], the Commission shall draw up an intermediate report on the application of this Directive, ***including on its possible deleterious effects on fundamental rights and on workers' mobility as well as possible further improvements on innovation cooperation, paying special attention to the effects on SMEs***, and submit it to the European Parliament and the Council. This report shall take due account of the report ***on litigation trends and shall evaluate the impact of this Directive in particular on the levels of open innovation, collaborative research and labour mobility***.

### *Justification*

*As a trade secret is not considered as an Intellectual property right and is protected in a context of unfair competition, the EOIPR does not seem the appropriate body to assist the Commission*

## PROCEDURE

<b>Title</b>	Protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure
<b>References</b>	COM(2013)0813 – C7-0431/2013 – 2013/0402(COD)
<b>Committee responsible</b> Date announced in plenary	JURI 9.12.2013
<b>Opinion by</b> Date announced in plenary	ITRE 9.12.2013
<b>Rapporteur</b> Date appointed	Michèle Rivasi 22.7.2014
<b>Discussed in committee</b>	25.9.2014                      22.1.2015
<b>Date adopted</b>	14.4.2015
<b>Result of final vote</b>	+ :                      46 - :                      5 0 :                      4
<b>Members present for the final vote</b>	Bendt Bendtsen, Jerzy Buzek, Soledad Cabezón Ruiz, Philippe De Backer, Pilar del Castillo Vera, Christian Ehler, Peter Eriksson, Adam Gierek, Theresa Griffin, András Gyürk, Roger Helmer, Hans-Olaf Henkel, Dawid Bohdan Jackiewicz, Kaja Kallas, Barbara Kappel, Seán Kelly, Jeppe Kofod, Miapetra Kumpula-Natri, Janusz Lewandowski, Ernest Maragall, Edouard Martin, Csaba Molnár, Nadine Morano, Dan Nica, Aldo Patriciello, Miloslav Ransdorf, Michel Reimon, Herbert Reul, Paul Rübig, Algirdas Saudargas, Dario Tamburrano, Patrizia Toia, Evžen Tošenovský, Claude Turmes, Miguel Urbán Crespo, Vladimir Urutchev, Adina-Ioana Vălean, Kathleen Van Brempt, Henna Virkkunen, Martina Werner, Hermann Winkler, Anna Záborská, Flavio Zanonato
<b>Substitutes present for the final vote</b>	Pascal Arimont, Simona Bonafè, Lefteris Christoforou, Cornelia Ernst, João Ferreira, Eugen Freund, Michèle Rivasi, Maria Spyrali, Pavel Telička, Marco Zullo
<b>Substitutes under Rule 200(2) present for the final vote</b>	Daniela Aiuto, Stanisław Ożóg