



EUROPEAN PARLIAMENT

2014 - 2019

---

*Committee on Legal Affairs*

---

**2013/0402(COD)**

26.3.2015

# **AMENDMENTS**

## **38 - 171**

**Draft report**  
**Constance Le Grip**  
(PE546.885v01-00)

on Protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

Proposal for a directive  
(COM(2013)0813 – C7-0431/2013 – 2013/0402(COD))

AM\1055293EN.doc

PE552.084v01-00

**EN**

*United in diversity*

**EN**



## Amendment 38

Jiří Maštálka

### 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 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

##### *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. ***Trade secrets and intellectual property rights constitute two differentiated legal instruments.*** 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

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.

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.

Or. en

**Amendment 39**  
**Sergio Gaetano Cofferati**

**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 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***

*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 use confidentiality as a business and research innovation management tool, covering a diversified range of information, which

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.

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.

Or. it

**Amendment 40**  
**Julia Reda, Pascal Durand**

**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 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*

*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 intellectual property rights such as patents, design rights or copyright is one of them. Another is to protect access that is valuable to 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.*

entity and not *generally* known *among or readily accessible to persons that deal with the kind of information in question and 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.*

Or. en

#### *Justification*

*The use of "formal" gives the impression that trade secrets are a sort of IPR, but they are not. Trade secret and IPR should not be put on the same footing as they are very different in nature and do not serve the same purpose. The patent system corresponds to a social contract where exclusive rights are granted in exchange of the disclosure, through its description in the patent, of an invention. It needs also to be clarified what "widely known" means in the context of trade secrets.*

**Amendment 41**  
**Jiří Maštálka**

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

*Amendment*

(2) Open innovation is an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. Trade secrets have an important role in protecting the exchange of knowledge between businesses within and across the borders of the internal market in the context of research and development and innovation. Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the internal market. Open innovation is a catalyst for new ideas to find their way to the market meeting the needs of consumers and tackling societal challenges. In an internal market where barriers to such cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation is also important for employment growth and improving competitiveness of the Union economy ***under the protection of employment mobility***. Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by third parties.

Or. en

**Amendment 42**  
**Jiří Maštálka, Kostas Chrysogonos**

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

*Amendment*

(2) Open innovation is an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. Trade secrets have an important role in protecting the exchange of knowledge between businesses, ***they mean a significant protection especially for SMEs*** within and across the borders of the internal market in the context of research and development and innovation. Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the internal market. Open innovation is a catalyst for new ideas to find their way to the market meeting the needs of consumers and tackling societal challenges. In an internal market where barriers to such cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation is also important for employment growth and improving competitiveness of the Union economy. Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by third parties.

Or. en



**Amendment 43**  
**Sergio Gaetano Cofferati**

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

*Amendment*

(2) Open innovation is an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. Trade secrets have an important role in protecting the exchange of knowledge between businesses within and across the borders of the internal market in the context of research and development and innovation. Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the internal market. Open innovation is a catalyst for new ideas to find their way to the market meeting the needs of consumers and tackling societal challenges. ***The dissemination of knowledge and information must be considered essential to ensuring dynamic, positive and equal business development opportunities.*** In an internal market where barriers to such cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation is also important for employment growth and improving competitiveness of the Union economy. Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by third parties.

**Amendment 44**  
**Julia Reda, Pascal Durand**

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

*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 within and across the borders of the internal market in the context of research and development and innovation. Nevertheless, the protection against the*** unlawful acquisition, use or disclosure ***of trade secrets should not to be detrimental to innovation and employment mobility.***

*parties.*

Or. en

### *Justification*

*Open innovation it is not only based on contractual agreements between firms regarding the management of exclusive rights. Trade secrets can have a role to play but are not necessarily central to the process of open innovation. On the contrary, overprotection can hamper open innovation.*

## **Amendment 45**

**Julia Reda, Pascal Durand**

### **Proposal for a directive**

#### **Recital 3**

#### *Text proposed by the Commission*

(3) ***Innovative*** businesses are ***increasingly*** exposed to dishonest practices aiming at misappropriating trade secrets, such as theft, unauthorised copying, economic espionage, breach of confidentiality requirements, whether from within or from outside of the Union. ***Recent developments, such as globalisation, increased outsourcing, longer supply chains, increased use of information and communication technology. contribute to increasing the risk of those practices.*** The unlawful acquisition, use or disclosure of a trade secret compromises the ***legitimate trade secret holder's ability to*** obtain first mover returns using the outputs of its ***innovative*** efforts. Without effective and comparable legal means for defending trade secrets across the Union, ***incentives to engage in innovative cross-border activity within the internal market are undermined and trade secrets are unable to fulfil their potential as drivers of economic growth and jobs. Thus, innovation and creativity are discouraged and investment diminishes, affecting the***

#### *Amendment*

(3) Businesses are exposed to dishonest practices aiming at misappropriating trade secrets, such as theft, unauthorised copying, economic espionage, breach of confidentiality requirements, whether from within or from outside of the Union. The unlawful acquisition, use or disclosure of a trade secret compromises the ***ability of the person lawfully controlling the trade secret to*** obtain first mover returns using the outputs of its efforts. Without effective and comparable legal means for defending trade secrets across the Union, ***businesses will be less secure when engaging in collaboration with cross-border partners, which undermines the growth enhancing potential of the internal market.***

***smooth functioning*** of the internal market  
***and undermining its growth enhancing  
potential.***

Or. en

#### *Justification*

*The purpose of the recitals is to set out concise reasons for the chief provisions of the enacting terms and do not need to be extensively theorising about issues which are not in the scope of the regulation (innovation policy and what incentivises it or not).*

#### **Amendment 46**

**Julia Reda, Pascal Durand**

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

#### **Recital 4**

*Text proposed by the Commission*

*Amendment*

***(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>.***

***(4) The Agreement on trade-related aspects of intellectual property (the TRIPS Agreement). It contains, inter alia, provisions on the protection of trade secrets - referred to in the text as 'undisclosed information'- against their unlawful acquisition, use or disclosure by third parties.***

---

<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).***

*Justification*

*Very few countries were supporting GATT's negotiation on trade secrets. There was no agreement on the issue among negotiating countries. This is why the TRIPS agreement remained vague and does not mention the term trade secrets but "undisclosed information", so that Member States could keep latitude.*

**Amendment 47**

**Julia Reda, Pascal Durand**

**Proposal for a directive**

**Recital 5**

*Text proposed by the Commission*

**(5) *Notwithstanding the TRIPS Agreement***, there are important differences in the Member States legislation as regards the protection of trade secrets against their unlawful acquisition, use or disclosure by other persons. Thus, for example, not all Member States have adopted national definitions of trade secrets and/or unlawful acquisition, use or disclosure of a trade secret, so that the scope of protection is not readily accessible and differs throughout Member States. Furthermore, there is no consistency as regards the civil law remedies available in case of unlawful acquisition, use or disclosure of trade secrets as cease and desist orders are not always available in all Member States against third parties who are not competitors of the legitimate trade secret holder. Divergences also exist across the Member States with respect to the treatment of third parties who acquired the trade secret in good faith but subsequently come to learn, at the time of use, that their acquisition derived from a previous unlawful acquisition by another party.

*Amendment*

(5) There are important differences in the Member States legislation as regards the protection of trade secrets against their unlawful acquisition, use or disclosure by other persons. Thus, for example, not all Member States have adopted national definitions of trade secrets and/or unlawful acquisition, use or disclosure of a trade secret, so that the scope of protection is not readily accessible and differs throughout Member States. Furthermore, there is no consistency as regards the civil law remedies available in case of unlawful acquisition, use or disclosure of trade secrets as cease and desist orders are not always available in all Member States against third parties who are not competitors of the legitimate trade secret holder. Divergences also exist across the Member States with respect to the treatment of third parties who acquired the trade secret in good faith but subsequently come to learn, at the time of use, that their acquisition derived from a previous unlawful acquisition by another party.

## Justification

*The TRIPS agreement on purpose offered a broad definition of undisclosed information and did not mention trade secrets.*

### Amendment 48

**Julia Reda, Pascal Durand**

#### Proposal for a directive

##### Recital 7

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

(7) The differences in the legal protection of trade secrets provided for by the Member States imply that trade secrets do not enjoy an equivalent level of protection throughout the Union, thus leading to fragmentation of the internal market in this area and weakening the overall deterrent effect of the rules. The internal market is affected in so far as such differences lower businesses' incentives to undertake innovative-related cross-border economic activity, including research or manufacturing cooperation with partners, outsourcing or investment in other Member States, which would depend on the use of the information protected as trade secrets. ***Cross-border network research and development as well as innovation-related activities, including related manufacturing and subsequent cross-border trade, are rendered less attractive and more difficult within the Union, thus also resulting in innovation-related inefficiencies at Union scale. In addition, higher business risk appears in Member States with comparatively lower levels of protection, where trade secrets may be stolen or otherwise unlawfully acquired more easily. This leads to inefficient allocation of capital to growth-enhancing innovation within the internal market because of the higher expenditure on protective measures to compensate for the***

###### *Amendment*

(7) The differences in the legal protection of trade secrets provided for by the Member States imply that trade secrets do not enjoy an equivalent level of protection throughout the Union, thus leading to fragmentation of the internal market in this area and weakening the overall deterrent effect of the rules. The internal market is affected in so far as such differences lower businesses' incentives to undertake innovative-related cross-border economic activity, including research or manufacturing cooperation with partners, outsourcing or investment in other Member States, which would depend on the use of the information protected as trade secrets. Legislative regime differences also facilitate the importation of goods from third countries into the Union through entry points with weaker protection, when the design, manufacturing or marketing of those goods rely on ***trade secrets that have been proven to be*** stolen or unlawfully acquired. On the whole, such differences create a prejudice to the proper functioning of the internal market.

*insufficient legal protection in some Member States. It also favours the activity of unfair competitors who following the unlawful acquisition of trade secrets could spread resulting goods across the internal market.* Legislative regime differences also facilitate the importation of goods from third countries into the Union through entry points with weaker protection, when the design, manufacturing or marketing of those goods rely on stolen or *otherwise* unlawfully acquired *trade secrets*. On the whole, such differences create a prejudice to the proper functioning of the internal market.

Or. en

**Amendment 49**  
**Julia Reda, Pascal Durand**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

(7) The differences in the legal protection of trade secrets provided for by the Member States imply that trade secrets do not enjoy an equivalent level of protection throughout the Union, thus leading to fragmentation of the internal market in this area and weakening the overall deterrent effect of the rules. The internal market is affected in so far as such differences lower businesses' incentives to undertake innovative-related cross-border economic activity, including research or manufacturing cooperation with partners, outsourcing or investment in other Member States, which would depend on the use of the information protected as trade secrets. *Cross-border network research and development as well as innovation-related activities, including related manufacturing and subsequent cross-*

*Amendment*

(7) The differences in the legal protection of trade secrets provided for by the Member States imply that trade secrets do not enjoy an equivalent level of protection throughout the Union, thus leading to fragmentation of the internal market in this area and weakening the overall deterrent effect of the rules. The internal market is affected in so far as such differences lower businesses' incentives to undertake innovative-related cross-border economic activity, including research or manufacturing cooperation with partners, outsourcing or investment in other Member States, which would depend on the use of the information protected as trade secrets. Legislative regime differences also facilitate the importation of goods from third countries into the Union through entry points with weaker protection, when

*border trade, are rendered less attractive and more difficult within the Union, thus also resulting in innovation-related inefficiencies at Union scale. In addition, higher business risk appears in Member States with comparatively lower levels of protection, where trade secrets may be stolen or otherwise unlawfully acquired more easily. This leads to inefficient allocation of capital to growth-enhancing innovation within the internal market because of the higher expenditure on protective measures to compensate for the insufficient legal protection in some Member States. It also favours the activity of unfair competitors who following the unlawful acquisition of trade secrets could spread resulting goods across the internal market.* Legislative regime differences also facilitate the importation of goods from third countries into the Union through entry points with weaker protection, when the design, manufacturing or marketing of those goods rely on stolen or *otherwise* unlawfully acquired *trade secrets*. On the whole, such differences create a prejudice to the proper functioning of the internal market.

the design, manufacturing or marketing of those goods rely on *trade secrets that have been proven to be* stolen or unlawfully acquired. On the whole, such differences create a prejudice to the proper functioning of the internal market.

Or. en

**Amendment 50**  
**Tadeusz Zwiefka**

**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

*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 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.

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. ***This Directive is without prejudice to the possibility for Member States to provide for a more far reaching protection against the unlawful acquisition, use or disclosure of trade secrets.***

Or. en

## **Amendment 51**

### **Jean-Marie Cavada**

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

#### **Recital 8**

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

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

##### *Amendment*

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

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

as to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality, ***including in the context of public and private contracts. The information or know-how should also have actual or potential commercial value. The information or know-how has commercial value, in particular, to the extent that its unlawful acquisition, use or disclosure is likely to cause harm to the person who legitimately controls it, by undermining their scientific and technological potential, economic or financial interests or their ability to withstand competition.*** 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

Or. fr

**Amendment 52**  
**Sergio Gaetano Cofferati**

**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***

*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 ***and precise*** definition of a trade secret. Such

*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.

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.

Or. it

### **Amendment 53** **Daniel Buda**

#### **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

##### *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 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. ***Such information and know-how must be secret in nature, they***

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.

***must have actual or potential commercial value, and their protection must not be contrary to public interest.*** 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.

Or. ro

### *Justification*

*Addition needed in view of the definition of the 'trade secret' as given in Article 2(1).*

## **Amendment 54**

**Julia Reda, Pascal Durand**

### **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

##### *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

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.

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, ***including competitors***.

Or. en

### *Justification*

*It is essential that the directive is able to distinguish between what can be considered a trade secret or not. The subject matter of the directive cannot cover information that is required to be disclosed by Union or national law.*

## **Amendment 55**

**Jiří Maštálka**

### **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.

#### *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 should not be considered unlawful disclosure of a trade secret. ***Similarly the case of the protecting of legitimate public interest, such as consumer protection, the protection of workers, the protection of public health, environment as well as the safeguard of fundamental rights, including freedom of expression and information, the prevention of unfair***

***competition should not fall under the scope of this Directive.***

---

<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).

---

<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).

Or. en

**Amendment 56**  
**Julia Reda, Pascal Durand**

**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.

*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 should not be considered unlawful disclosure of a trade secret. ***Similarly, any information which disclosure, acquisition or use is required by Union or national rules or by public authorities should not fall within the scope of this Directive. Moreover, the disclosure, acquisition or use of information should not be considered unlawful when made in the purpose of the legitimate protection of the public interest, such as consumer protection, the protection of workers, the protection of***

*human, animal or plant life, the protection of the environment and of urban environment, the safeguard of fundamental rights, including freedom of expression and information, the prevention of unfair competition.*

---

<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).

---

<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).

Or. en

**Amendment 57**  
**Mary Honeyball, Glenis Willmott, Catherine Stihler**

**Proposal for a directive**  
**Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

*(9a) For the purposes of this Directive, and in accordance with Regulation (EU) No 536/2014 of the European Parliament and of the Council<sup>1a</sup>, in general the data included in a clinical study report should not be considered commercially confidential once a marketing authorisation has been granted, the procedure for granting the marketing authorisation has been completed or the application for marketing authorisation has been withdrawn. In addition, the main characteristics of a clinical trial, the conclusion on Part I of the assessment report for the authorisation of a clinical trial, the decision on the authorisation of a clinical trial, the substantial modification of a clinical trial, and the clinical trial results including reasons for temporary halt or early termination, in general, should not be considered a trade*

*secret.*

---

*<sup>1a</sup> Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use (OJ L 158, 27.5.2014, p. 1).*

Or. en

**Amendment 58**  
**Jytte Guteland**

**Proposal for a directive**  
**Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) In the interest of protecting the environment, this Directive is without prejudice to the obligations imposed on the Union and its Member States by the United Nations Aarhus Convention to grant access to and disseminate environmental information. Specifically, Article 4(4)(d) and Article 5(8) of the Aarhus Convention requires public authorities to disclose information on "emissions which is relevant to the protection of the environment" and "develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices" , transposed into Union law by Article 6(1) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council<sup>1a</sup> and Article 4(1) of Directive 2003/4/EC of the European Parliament and of the Council<sup>1b</sup>;***

---

*<sup>1a</sup> Regulation (EC) No 1367/2006 of the*



*European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).*

*<sup>1b</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (OJ L 41, 14.2.2003, p. 16).*

Or. en

**Amendment 59**  
**Pascal Durand, Julia Reda**

**Proposal for a directive**  
**Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

*(9a) This Directive is without prejudice to the obligations imposed on the Union and its Member States by the United Nations Aarhus Convention to grant access to and disseminate environmental information. In particular, Article 4(4)(d) of the Aarhus Convention requires public authorities to disclose information on "emissions which is relevant to the protection of the environment", even in case of confidential commercial and industrial information. This requirement is reinforced and transposed into Union law by Article 6(1) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council<sup>1a</sup> and Article 4(1) of Directive 2003/4/EC of the European Parliament and of the Council<sup>1b</sup>. Furthermore, Article 5(8) of the Aarhus Convention requires the Union and its Member States to "develop mechanisms*

*with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices". Accordingly, any acquisition, use or disclosure of business secrets by an EU institution or national public authority in conformity with these provisions shall not be considered unlawful.*

---

<sup>1a</sup> *Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).*

<sup>1b</sup> *Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (OJ L 41, 14.2.2003, p. 16).*

Or. en

**Amendment 60**  
**Jean-Marie Cavada**

**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

*Amendment*

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. **Its provisions cannot be used for the sole purpose of restricting competition. Thus**, independent discovery of the same know-how and information **remains possible** and

acquired product.

competitors of the trade secret holder *are* also free to reverse engineer any lawfully acquired product.

Or. fr

**Amendment 61**  
**Sergio Gaetano Cofferati**

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

*Text proposed by the Commission*

*Amendment*

***(10a) This Directive shall not prejudice the application of national or EU laws which provide for or require the dissemination of information which could be defined as a trade secret. In such cases, the overriding general public interest should be clearly defined.***

Or. it

**Amendment 62**  
**Jean-Marie Cavada**

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

*Text proposed by the Commission*

*Amendment*

***(10 a) The lawful acquisition of confidential commercial information or know-how cannot subsequently be used to justify disclosure constituting an act of unfair competition, defined in Article 10a of the Paris Convention on the protection of intellectual property as any act of competition contrary to honest practices in industrial or commercial matters. While healthy competition brought about by the lawful use of data, including data generated by reverse engineering, should***

***be encouraged, it is essential to punish any use which is contrary to honest commercial practices***

Or. fr

*Justification*

*Lawful acquisition, use or disclosure are not systematically linked and can, in practice, be followed by unlawful reuse or re-disclosure. The unfair use of lawfully acquired information through reverse engineering leads to an increase in counterfeits and parasitic copies in the internal market.*

**Amendment 63**  
**Jean-Marie Cavada**

**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 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.  
***Any measure that may directly or indirectly restrict sharing and use of knowledge and the hiring and mobility of labour, including the introduction of a uniform definition of trade secrets and the***

*introduction and implementation of uniform rules for the protection of trade secrets within the internal market, should respect the principle of proportionality in the interest of innovation and free competition.*

Or. fr

**Amendment 64**  
**Julia Reda, Pascal Durand**

**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 *including workers mobility*, without jeopardising other objectives and principles of public interest, *such as fundamental rights, consumer protection, health and environmental protection*. 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.

Or. en

**Amendment 65**  
**Jiří Maštálka**

## 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 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), whistleblowing activity, ***and inter alia work of journalists, human rights activists and trade unionists.*** 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. ***Trade secrets should in no way be used as a way to hide information to public institutions.***

Or. en

## Amendment 66

Angelika Niebler, Axel Voss

## Proposal for a directive

### Recital 12

#### *Text proposed by the Commission*

(12) The smooth functioning of the internal market would be undermined if the

#### *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 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.***

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.

Or. de

**Amendment 67**  
**Julia Reda, Pascal Durand**

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

*Text proposed by the Commission*

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

*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. ***However, the***

secret by a third party.

*protection against unlawful acquisition, disclosure and use of trade secrets should not restrict employees' mobility and become a burden in their efforts to find a job in the EU market. This needs to be taken into account when setting the limitation period to the measures, procedures and remedies provided for in this Directive: this period should therefore not exceed a year. The legal framework set out by this Directive shall aim to properly reflect the necessary to have 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.*

Or. en

**Amendment 68**  
**Daniel Buda**

**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* non-confidential *elements* of judicial decisions. Such protection should remain in force

*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, 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 *public* access *to hearings*, or to *publish only* 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.

after the legal proceedings have ended for as long as the information covered by the trade secret is not in the public domain.

Or. ro

### *Justification*

*Access to evidence must not be limited because that would mean interfering with the right to fair trial, the right to defence and, in some cases, with the audiatur et altera pars principle ('principiul contradictorialității'). In order to nevertheless ensure the confidentiality of trade secrets throughout judicial proceedings, the competent judicial authorities may take evidence in a confidential manner.*

### **Amendment 69**

**Julia Reda, Pascal Durand**

### **Proposal for a directive**

#### **Recital 15**

*Text proposed by the Commission*

*Amendment*

***(15) Unlawful acquisition of a trade secret by a third party could have devastating effects on its legitimate holder since once publicly disclosed it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. As a result, it is essential to provide for fast and accessible interim measures for the immediate termination of the unlawful acquisition, use or disclosure of a trade secret. 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.***      ***deleted***

**Amendment 70**  
**Jean-Marie Cavada**

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

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

*Amendment*

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

Or. fr

**Amendment 71**  
**Julia Reda, Pascal Durand**

**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

*Amendment*

(17) A trade secret may be unlawfully used to design, manufacture or market goods, or components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the functioning of the internal

market. In *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.

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.

Or. en

**Amendment 72**  
**Sergio Gaetano Coffferati**

**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

*Amendment*

(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.

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. ***The provisions of this Directive shall therefore not apply where the information is disclosed in the overriding public interest or in compliance with a fundamental right.***

Or. it

### **Amendment 73**

**Jean-Marie Cavada, Frédérique Ries**

#### **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) 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 ***the press and the media, 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.

Or. fr

### **Amendment 74**

**Julia Reda, Pascal Durand**

#### **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) 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, ***freedom of the press and the media***, 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.

Or. en

**Amendment 75**  
**Mary Honeyball**

**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) 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 ***of the press and the media, 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 76**  
**Julia Reda, Pascal Durand**

**Proposal for a directive**  
**Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23a) Member States shall respect freedom of the press and the media, according to Article 11(2) of the Charter of Fundamental Rights of the European Union in order to ensure that the Directive does not restrict journalistic works, in particular with regard to investigation, protection of sources, and the right of the public to be informed***

Or. en

**Amendment 77**  
**Jean-Marie Cavada, Frédérique Ries**

**Proposal for a directive**  
**Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***(23 a) In particular, it is important that the freedom of the press and the media should be respected, in accordance with Article 11 paragraph 2 of the Charter of Fundamental Rights of the European Union, in order that this Directive does not hinder the work of journalists, especially in relation to investigations, the protection of sources and the public's right to information.***

Or. fr

**Amendment 78**  
**Jiří Maštálka**

**Proposal for a directive**  
**Recital 24 a (new)**

*Text proposed by the Commission*

*Amendment*

***(24a) However, the protection against unlawful acquisition, disclosure and use of trade secrets should not restrict employees' mobility and become a burden in their efforts to find a job. This need to be taken into account when setting the limitation period to the measures, procedures and remedies provided for in this Directive.***

Or. en

**Amendment 79**  
**Jiří Maštálka**

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

*Text proposed by the Commission*

*Amendment*

***(27a) This Directive will not affect the application of the freedom of movement for workers and the freedom of establishment, in particular Articles 48 and 49 of the TFEU and Article 15 of the Charter of Fundamental Rights of the European Union. The measures provided for in this Directive should not be used to restrict the free movement of workers, services and capital in a manner contrary to that Treaty and Charter.***

Or. en

**Amendment 80**  
**Julia Reda, Pascal Durand**

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

*Text proposed by the Commission*

*Amendment*

***(27a) The measures provided in the Directive and their implementation must not affect the application of the freedom of movement for workers and the freedom of establishment, in particular Articles 48 and 49 of the Treaty on the Functioning of the European Union and Article 15 of the Charter of Fundamental Rights of the European Union.***

Or. en

**Amendment 81  
Sergio Gaetano Cofferati**

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

*Text proposed by the Commission*

*Amendment*

***(27a) The measures provided in this Directive and their implementation shall be without prejudice to the freedom of movement and establishment of workers.***

Or. it

**Amendment 82  
Jean-Marie Cavada**

**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***

***Deleted***



*application of any other relevant law in other areas including intellectual property rights, privacy, access to documents and the law of contract. However, where the scope of application of Directive 2004/48/EC of the European Parliament and of the Council<sup>8</sup> and the scope of this Directive overlap, this Directive takes precedence as *lex specialis*.*

---

<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).*

Or. fr

#### *Justification*

*In law, there can be an overlap between Directive 2004/48/EC and this Directive only if their scope is not sufficiently well defined. In the event of a conflict, this Directive would prevail.*

### **Amendment 83**

**Julia Reda, Pascal Durand**

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

##### **Recital 28**

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

(28) The measures adopted to protect trade secrets against their unlawful acquisition, disclosure and use should not affect the application of any other relevant law in other areas including intellectual property rights, privacy, access to documents and the law of contract. However, where the scope of application of Directive 2004/48/EC of the European Parliament and of the Council<sup>8</sup> and the scope of this Directive overlap, this Directive takes precedence as *lex specialis*.

###### *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 ***environmental liability, consumer protection, health and safety requirements, health protection,*** intellectual property rights, privacy, access to documents and ***information, and*** the law of contract. ***Trade secret protection should not affect a disclosure of software source code such as publication of software under the European Union Public***

***License (EUPL) or compatible licenses.***

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*.

---

<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).

---

<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).

Or. en

*Justification*

*The European Union and public institutions rely on free and open source (e.g. EUPL, GPL) or source code disclosure (e.g. Microsoft „shared source“) for ICT security reasons. When formalising trade secret protections we should clarify that these protections do not withstand the examining of software source code as such protected under software copyright (2009/24/EC).*

**Amendment 84**  
**József Szájer**

**Proposal for a directive**  
**Article 1 – title**

*Text proposed by the Commission*

*Amendment*

Subject matter

Subject matter ***and scope***

Or. en

**Amendment 85**  
**Therese Comodini Cachia**

**Proposal for a directive**  
**Article 1 – title**

*Text proposed by the Commission*

*Amendment*

Subject matter

Subject matter *and scope*

Or. en

**Amendment 86**  
**Henna Virkkunen, Sampo Terho**

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

*Text proposed by the Commission*

*Amendment*

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

This Directive lays down rules on the protection against the unlawful acquisition, disclosure and use of trade secrets.  
***Member States may provide for higher protection against the unlawful acquisition, use or disclosure of trade secrets.***

Or. en

**Amendment 87**  
**Emil Radev**

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

*Text proposed by the Commission*

*Amendment*

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

This Directive lays down rules ***on*** the protection against the ***lawful and*** unlawful acquisition, disclosure and use of trade secrets ***and the measures, procedures and remedies for civil redress.***

Or. bg

**Amendment 88**  
**Sergio Gaetano Cofferati**

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

*Text proposed by the Commission*

*Amendment*

***The acquisition, use and disclosure of trade secrets shall be considered lawful where provided for under EU or national legislation or where carried out by public authorities in the exercise of their mandate, to ensure that the protection of trade secrets does not undermine the general public interest.***

***In such cases, therefore, such information shall not fall within the scope of this Directive.***

Or. it

**Amendment 89**  
**József Szájer**

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

*Text proposed by the Commission*

*Amendment*

***This Directive shall not affect the possibility for Member States, in compliance with the provisions of the Treaty, to lay down provisions ensuring more extensive protection of trade secrets against their unlawful acquisition, use or disclosure than that provided by this Directive, with the exception of Articles 4, 5, 6, 7, 8(1) second subparagraph, 8(3), 8(4), 9(2), 10, 12 and 14(3) [which shall be implemented in their entirety].***

***This Directive shall not affect Union and/or national law and/or practices concerning the information and***

*consultation of employees and the representation and collective defence of the interests of workers and employers, including co-determination.*

Or. en

*Justification*

*This wording is more in line with Article 1 of the TRIPS Agreement.*

**Amendment 90**  
**Therese Comodini Cachia**

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

*Text proposed by the Commission*

*Amendment*

*This Directive shall not affect the possibility for Member States, in compliance with the provisions of the Treaty, to lay down provisions ensuring more extensive protection of trade secrets against their unlawful acquisition, use or disclosure than that provided by this Directive, with the exception of Articles 4, 5, 6, 7, 8(1) second subparagraph, 8(3), 8(4), 9(2), 10, 12 and 14(3) [which shall be implemented in their entirety].*

*This Directive shall not affect Union and/or national law and/or practices concerning the information and consultation of employees and the representation and collective defence of the interests of workers and employers, including co-determination.*

Or. en

**Amendment 91**  
**Jytte Guteland**

**Proposal for a directive**  
**Article 1 – paragraph 1 a (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.***

Or. en

**Amendment 92**  
**Julia Reda, Pascal Durand**

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

*Text proposed by the Commission*

*Amendment*

***Any information the disclosure of which is required by the Union or national rules or by public authorities within the context of their mandate shall not fall within the scope of this Directive***

Or. en

*Justification*

*This clarification of scope is needed in order to avoid that companies circumvent legal obligations regarding disclosure of information which are part of the national or EU legal systems.*

**Amendment 93**  
**Sajjad Karim, Angel Dzhambazki**

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

*Text proposed by the Commission*

*Amendment*

***Member States may provide, in compliance with the provisions of the Treaty, for more protection against the unlawful acquisition, use or disclosure of trade secrets than required under this Directive, provided that compliance with Articles 4, 5, 6 (1), 7, 8 (1) second subparagraph, 8 (3), 8 (4), 9 (2), 10, 12 and 14 (3) is ensured;***

Or. en

**Amendment 94**  
**Jytte Guteland**

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

*Text proposed by the Commission*

*Amendment*

***Any information, of which the disclosure is required by international, Union or national law, or by public and regulatory authorities within the context of their mandate, shall not fall within the scope of this Directive.***

Or. en

**Amendment 95**  
**Julia Reda, Pascal Durand**

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

*Text proposed by the Commission*

*Amendment*

***Member States may provide, in compliance with the provision of the Treaty for more precise definitions and rules and comprehensive description of***

*lawful acquisition, use and disclosure of trade secrets provided that compliance with Articles 4, 5, 6, 7, 8(1)2nd sub para, 8(3), 8(4), 9(2), 10, 12, 14(3) of this Directive is ensured.*

Or. en

*Justification*

*Several Member States already have more specific legislation in place while others have none. Nevertheless, compliance with at least the requirements of the articles named above is required for the Directive to be fit for purpose, in particular lawful acquisition, proportionality, limitation period, application of safeguards.*

**Amendment 96**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

**Article 2– point 1 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

Or. it

**Amendment 97**

**Emil Radev**

**Proposal for a directive**

**Article 2 – point 1 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

(1) ‘trade secret’ means **business-related information, know-how, facts, decisions and data which meet** all of the following requirements:

Or. bg



**Amendment 98**  
**Daniel Buda**

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

*Text proposed by the Commission*

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

*Amendment*

(1) ‘trade secret’ means **commercial, technological and any other kind of** information, **including know-how**, which meets all of the following requirements:

Or. ro

*Justification*

*It is necessary to state the nature of the information that may be included in the trade secret category, and to include know-how. The list is not intended to be exhaustive, given that there may also be information other than that of a commercial or technological kind that may be considered a trade secret (for example, scientific information leading to the discovery of a medicine that has a commercial value).*

**Amendment 99**  
**Julia Reda, Pascal Durand**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*The Commission's definition is too vague. It should be made clear that a trade secret is not just any "information" rather information related to the commercial activity of the business in question*

**Amendment 100**  
**Virginie Rozière**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. fr

**Amendment 101**  
**Daniel Buda**

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

*Text proposed by the Commission*

(b) has commercial value because it is secret;

*Amendment*

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

Or. ro

**Amendment 102**  
**Julia Reda, Pascal Durand**

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

*Text proposed by the Commission*

(b) has commercial value because it is secret;

*Amendment*

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

*Justification*

*The notion of legitimate interest is key to preventing use of this Directive for unfair trading practices or anti-competitive behaviour*

**Amendment 103**

**Emil Radev**

**Proposal for a directive**

**Article 2 – point 1 – point b**

*Text proposed by the Commission*

b) has commercial value because it is secret;

*Amendment*

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

Or. bg

**Amendment 104**

**Julia Reda, Pascal Durand**

**Proposal for a directive**

**Article 2 – 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 under the circumstances, by the person lawfully in control of the information, to keep it secret. ***These reasonable steps shall be assessed by the competent judicial authorities on the basis, notably, of the legitimate use of technical and contractual means by the person lawfully in control of the information.***

Or. en

### *Justification*

*To ensure that claims of unlawful acquisition are not used as an unfair commercial practice or in an anti-competitive manner, persons lawfully in control of the trade secret must take clear steps and precautions to prevent disclosure and must be able to demonstrate how secrecy is ensured.*

#### **Amendment 105** **Jean-Marie Cavada**

##### **Proposal for a directive** **Article 2 – point 1 – point c**

*Text proposed by the Commission*

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

*Amendment*

(c) has been subject to reasonable steps under the circumstances, ***by the person who holds the information***, to keep it secret;

Or. fr

#### **Amendment 106** **Daniel Buda**

##### **Proposal for a directive** **Article 2 – point 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) its protection against disclosure is not contrary to public interest;***

Or. ro

#### **Amendment 107** **Mary Honeyball, Glenis Willmott, Catherine Stihler**

##### **Proposal for a directive** **Article 2 – point 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) its disclosure is not in the public interest or is not required under Union or Member State law.***

Or. en

**Amendment 108**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

***(ca) its disclosure is not required or authorised by national or EU law.***

Or. it

**Amendment 109**

**Virginie Rozière**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

***c a) they are legitimately kept secret;***

Or. fr

**Amendment 110**

**Daniel Buda**

**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 trade secret;

*Amendment*

(2) ‘trade secret holder’ means any natural **and/or** legal person lawfully controlling a trade secret;

Or. ro

**Amendment 111**

**Daniel Buda**

**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) ‘infringer’ means any natural **and/or** legal person who has unlawfully acquired, used or disclosed trade secrets;

Or. ro

**Amendment 112**

**Emil Radev**

**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) ‘infringer’ means any natural or legal person who has unlawfully ***or in a manner contrary to honest commercial practices*** acquired, used or disclosed trade secrets, ***thereby enabling the causation of damages to or actually damaging the interests of the trade secret holder;***

Or. bg

**Amendment 113**  
**Julia Reda, Pascal Durand**

**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) ‘**breacher**’ means any natural or legal person who has **intentionally** unlawfully acquired, used or disclosed trade secrets **for purposes of commercial nature and in a manner contrary to honest commercial practices**;

Or. en

*Justification*

*The use of the term infringer is used in the context of intellectual property law and is misleading in this context, since trade secret is not an intellectual property right.*

**Amendment 114**  
**Daniel Buda**

**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) ‘infringing goods’ means goods whose design, quality, **features**, manufacturing process or marketing significantly benefits from trade secrets unlawfully acquired, used or disclosed.

Or. ro

**Amendment 115**  
**Julia Reda, Julia Reda, Pascal Durand**

**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 goods **that are placed on the market** whose design, quality, manufacturing process or marketing **are demonstrated to benefit** from trade secrets unlawfully acquired, used or disclosed.

Or. en

*Justification*

*The use of the term "infringing goods" is used in the context of intellectual property law and therefore misleading in this context. The amendment replacing 'infringing' with 'unlawful' applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*

**Amendment 116**  
**Jean-Marie Cavada**

**Proposal for a directive**  
**Article 2 – 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 **or services**' means goods **placed on the market** whose **form** quality, **characteristics**, manufacturing process or marketing **have benefitted** from trade secrets unlawfully acquired, used or disclosed.

Or. fr

*Justification*

*Given the importance of the services sectors and the fact that their competitiveness is based on know-how and confidential business information, the directive must cover them as well. Also, the legal terms 'designs' and 'models' lead to confusion with intellectual property rights. It is preferable to use the term 'form' which is more generic.*



**Amendment 117**  
**Virginie Rozière**

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

*Amendment*

1. Member States shall ensure that trade secret holders ***who have suffered harm as a result of the acquisition, use or disclosure of a trade secret*** are entitled to apply for the measures, procedures and remedies provided for in this Directive in order to prevent, or obtain redress for, the unlawful acquisition, use or disclosure of a trade secret.

Or. fr

**Amendment 118**  
**Daniel Buda**

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

*Amendment*

1. Member States ***shall guarantee the right of*** trade secret ***holders to apply for the measure, procedures and remedies*** provided for in this Directive in order to prevent, or obtain redress for, the unlawful acquisition, use or disclosure of a trade secret.

Or. ro

**Amendment 119**  
**Kostas Chrysogonos**

**Proposal for a directive**  
**Article 3 – paragraph 2 – introductory part**

*Text proposed by the Commission*

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:

*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 negligence by:

Or. en

**Amendment 120**

**József Szájer**

**Proposal for a directive**

**Article 3 – paragraph 2 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

2. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful, **in particular in the following cases**:

Or. en

**Amendment 121**

**Daniel Buda**

**Proposal for a directive**

**Article 3 – paragraph 2 – introductory part**

*Text proposed by the Commission*

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:

*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 negligence by:

Or. ro

### *Justification*

*In practice, it is often difficult to delineate between gross and slight negligence. Also, the act of acquiring a trade secret without the consent of its holder must be sanctioned, irrespective of the form of negligence with which the infringer acted.*

#### **Amendment 122**

**Jytte Guteland**

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

#### **Article 3 – paragraph 2 – introductory part**

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

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:

##### *Amendment*

2. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful whenever carried out intentionally *and with the aim of acquiring an economic gain or of causing economic detriment to the trade secret holder* by:

Or. en

#### **Amendment 123**

**Angelika Niebler, Axel Voss**

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

#### **Article 3 – paragraph 2 – introductory part**

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

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:

##### *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 negligence by:

Or. de

### *Justification*

*The use or disclosure of a trade secret can have devastating consequences for the trade secret holder even if it is carried out merely through ordinary negligence. Even where there is an*

*infringement of the trade secret through ordinary negligence, the holder of the secret deserves protection.*

**Amendment 124**

**Therese Comodini Cachia**

**Proposal for a directive**

**Article 3 – paragraph 2 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

2. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful, ***in particular in the following cases:***

Or. en

**Amendment 125**

**Julia Reda, Pascal Durand**

**Proposal for a directive**

**Article 3 – paragraph 2 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

2. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful whenever carried out intentionally ***with the aim of acquiring an economical gain or of causing economic harm to the person lawfully controlling it*** or with gross negligence by:

Or. en

*Justification*

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

**Amendment 126**  
**Angel Dzhambazki**

**Proposal for a directive**  
**Article 3 – paragraph 2 – introductory part**

*Text proposed by the Commission*

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:

*Amendment*

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

Or. en

**Amendment 127**  
**József Szájer**

**Proposal for a directive**  
**Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*Amendment*

(a) unauthorised access to or copy ***or taking*** of any documents, objects, materials, substances or electronic files of the trade secret holder, containing the trade secret or from which the trade secret can be deduced ***where the person carrying out any of those acts knew or should, under the circumstances, have known that he was engaged in unauthorised acquisition of that trade secret***;

Or. en

*Justification*

*Trade secret holder is by definition the person lawfully controlling the trade secret [cf. Article 2(1) c)], therefore it is not necessary to repeat that the trade secret is lawfully under his control. This qualifying condition is important not to broaden the scope of unlawful acquisition excessively. This addition, in the light of Art. 3(2)(e), also renders Art. 4(1)(c) unnecessary.*

**Amendment 128**  
**Sergio Gaetano Cofferati**

**Proposal for a directive**  
**Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*Amendment*

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

Or. it

**Amendment 129**  
**Daniel Buda**

**Proposal for a directive**  
**Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*Amendment*

(a) unauthorised access to, ***multiplication*** or copy of, ***or any similar action in relation to 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;

Or. ro

*Justification*

*Unauthorised access or copy does not cover all the actions that may be committed in relation to the 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, and the purpose of which is to unlawfully acquire the trade secret. In this context, the list should not be exhaustive.*

**Amendment 130**  
**Therese Comodini Cachia**

**Proposal for a directive**  
**Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*Amendment*

(a) unauthorised access to or copy **or taking** of any documents, objects, materials, substances or electronic files of the trade secret holder, containing the trade secret or from which the trade secret can be deduced **where the person carrying out any of these acts knew or should, under the circumstances, have known that he was engaged in unauthorised acquisition of that trade secret**;

Or. en

**Amendment 131**  
**Julia Reda, Pascal Durand**

**Proposal for a directive**  
**Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*The terminology 'from which the trade secret can be deduced' creates ambiguity with regards to reverse engineering. Reverse engineering must be safeguarded.*

**Amendment 132**

**József Szájer**

**Proposal for a directive**

**Article 3 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) theft;**

***deleted***

Or. en

**Amendment 133**

**Daniel Buda**

**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, ***inducement or complicity*** to breach a confidentiality agreement or any other duty to maintain secrecy;

Or. ro

**Amendment 134**

**Julia Reda, Pascal Durand**

**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.**

***deleted***

Or. en



*Justification*

*This provision is too vague and could lead to abuse. Points a) to e) clearly outline what is unlawful or dishonest commercial practice.*

**Amendment 135**

**Glenis Willmott, Mary Honeyball**

**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.***

***deleted***

Or. en

**Amendment 136**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

**Article 3 – paragraph 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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, ***with the effect of gaining an advantage or causing financial loss:***

Or. it

**Amendment 137**

**Kostas Chrysogonos**

**Proposal for a directive**  
**Article 3 – paragraph 3 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 138**  
**Daniel Buda**

**Proposal for a directive**  
**Article 3 – paragraph 3 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

Or. ro

**Amendment 139**  
**Jytte Guteland**

**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

*Amendment*

3. The use or disclosure of a trade secret shall be considered unlawful whenever carried out, without the consent of the trade secret holder, intentionally **and with the aim of acquiring an economical gain or of**

meet any of the following conditions:

*causing economic detriment to the trade secret holder*, by a person who is found to meet any of the following conditions:

Or. en

#### **Amendment 140**

**Angelika Niebler, Axel Voss**

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

#### **Article 3 – paragraph 3 – introductory part**

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

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

##### *Amendment*

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

Or. de

##### *Justification*

*The use or disclosure of a trade secret can have devastating consequences for the trade secret holder even if it is carried out merely through ordinary negligence. Even where there is an infringement of the trade secret through ordinary negligence, the holder of the secret deserves protection.*

#### **Amendment 141**

**Julia Reda, Pascal Durand**

#### **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

##### *Amendment*

3. The use or disclosure of a trade secret shall be considered unlawful whenever carried out, without the consent of the trade secret holder, intentionally **and with the aim of acquiring an economic gain or**

meet any of the following conditions:

***advantage or of causing economic harm to the person lawfully controlling the trade secret*** or with gross negligence, by a person who is found to meet any of the following conditions:

Or. en

*Justification*

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

**Amendment 142**

**Emil Radev**

**Proposal for a directive**

**Article 3 – paragraph 3 – point a**

*Text proposed by the Commission*

*Amendment*

a) has acquired the trade secret unlawfully;

a) has acquired the trade secret unlawfully ***or in a manner contrary to honest commercial practices;***

Or. bg

**Amendment 143**

**Julia Reda, Pascal Durand**

**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 ***according to national and EU law*** to maintain secrecy of the trade secret;

Or. en

**Amendment 144**  
**Daniel Buda**

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

*Text proposed by the Commission*

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

*Amendment*

(c) is in breach of a contractual or any other duty to **prohibit the use of the trade secret for any other purposes than those expressly set out by the trade secret holder**.

Or. ro

**Amendment 145**  
**Julia Reda, Pascal Durand**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 146**  
**Angelika Niebler, Axel Voss**

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

*Text proposed by the Commission*

*Amendment*

**ca) has legitimately come into the possession of or become aware of the trade secret in the context of an employment relationship and uses this trade secret or discloses it during the ongoing employment relationship or after**

*this relationship has ended.*

Or. de

*Justification*

*The betrayal of trade secrets by employees and the exploitation of secrets by former employees are the most relevant occurrences in practice when it comes to the unlawful use of trade secrets and should therefore be mentioned explicitly.*

**Amendment 147**  
**Jean-Marie Cavada**

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

*Text proposed by the Commission*

*Amendment*

*c a) 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 trade secret holder and/or the smooth functioning of the internal market.*

Or. fr

*Justification*

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

**Amendment 148**  
**Jean-Marie Cavada**

**Proposal for a directive**  
**Article 3 – paragraph 3 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*3a. The obligations laid down in this paragraph 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.*

Or. fr

**Amendment 149**  
**Sergio Gaetano Cofferati**

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

*Text proposed by the Commission*

*Amendment*

***3a. The provisions set out in paragraph 3 shall not limit the use by employees of the knowledge and skills honestly acquired in the exercise of their duties.***

Or. it

**Amendment 150**  
**Emil Radev**

**Proposal for a directive**  
**Article 3 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The company shall define and notify its employees in advance of the specific facts, information, decisions and data to which access has been limited and which thus constitute a trade secret.***

Or. bg

**Amendment 151**  
**Sergio Gaetano Cofferati**

**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 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, ***in cases where the person engaging in this activity was, or depending on the circumstances, should have been, aware of the fact that unlawful use had been made of the trade secret.***

Or. it

**Amendment 152**  
**József Szájer**

**Proposal for a directive**  
**Article 4 – title**

*Text proposed by the Commission*

Lawful acquisition, ***use and disclosure*** of trade secrets

*Amendment*

Lawful acquisition of trade secrets ***and exceptions***

Or. en

**Amendment 153**  
**Julia Reda, Pascal Durand**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en



*Justification*

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

**Amendment 154**

**Sergio Gaetano Cofferati**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

***(aa) required or authorised by national or EU law;***

Or. it

**Amendment 155**

**József Szájer**

**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 it is lawfully in the possession of the acquirer of the information ***who is free from any duty to limit the acquisition of the trade secret;***

Or. en

**Amendment 156**

**Therese Comodini Cachia**

**Proposal for a directive**

**Article 4 – paragraph 1 – point b**

*Text proposed by the Commission*

(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;

*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 *who is free from any duty to limit the acquisition of the trade secret*;

Or. en

**Amendment 157**  
**Jean-Marie Cavada**

**Proposal for a directive**  
**Article 4 – paragraph 1 – point b**

*Text proposed by the Commission*

(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;

*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 *who is free from any legally valid duty to limit the acquisition of the trade secret, provided that the information acquired is not used in a manner contrary to honest commercial practice*;

Or. fr

**Amendment 158**  
**Sergio Gaetano Cofferati**

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

*Text proposed by the Commission*

*(ba) use of the knowledge and skills honestly acquired by employees in the normal exercise of their duties;*

**Amendment 159**  
**József Szájer**

**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;*

*deleted*

Or. en

**Amendment 160**  
**Sergio Gaetano Cofferati**

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

Or. it

**Amendment 161**  
**Jytte Guteland**

**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

(c) **worker's representatives acquisition and disclosure of trade secrets in the context of the** exercise of the **rights** of

national law and/or practices;

workers representatives to information, ***consultation and participation*** in accordance with Union and national law and practices, ***and the collective defence of the interests of workers and employers, including co-determination;***

Or. en

## **Amendment 162**

**Julia Reda, Pascal Durand**

### **Proposal for a directive**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*No all enterprises have workers representatives*

## **Amendment 163**

**Julia Reda, Pascal Durand**

### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

***(ca) acquired through the knowledge, qualifications and skills of employees obtained in previous employment conditions, which are not covered by the definition of trade secrets as provided for in Article 2. Contractual obligations and any other actions limiting the use of such***

*knowledge, qualifications and skills shall comply with the principle of free movement of workers and of proportionality in the interest of innovation and free competition*

Or. en

**Amendment 164**  
**Giovanni Toti**

**Proposal for a directive**  
**Article 4 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

**Amendment 165**  
**Angelika Niebler, Axel Voss**

**Proposal for a directive**  
**Article 4 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. de

*Justification*

*The statement is not sufficiently precise and risks significantly restricting the protection of secrets.*

**Amendment 166**  
**Jytte Guteland**

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

*Text proposed by the Commission*

*Amendment*

*(da) provided by the knowledge, qualifications and skills that employees have achieved in previous employment, and which are not covered by the definition of trade secrets as described in Article 2. 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;*

Or. en

**Amendment 167**  
**Jytte Guteland**

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

*Text proposed by the Commission*

*Amendment*

*(db) such acquisition, use or disclosure is required or authorised by Article 4(4)(d) or Article 5(8) of the United Nations Aarhus Convention, Article 6(1) of Regulation (EC) 1367/2006 or Article 4(1) of Directive 2003/4/EC which require the disclosure of information relevant to the protection of the environment.*

Or. en

**Amendment 168**  
**Jiří Maštálka**

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

*Text proposed by the Commission*

*Amendment*

***1a. Information that may qualify as trade secret may also be of direct importance to society as a whole, for example, in the field of health, environmental and food safety policies, and access to this type of information for public institutions should not be hampered by the mere fact of this type of information being classified as 'trade secret'.***

Or. en

**Amendment 169**  
**Jean-Marie Cavada**

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

*Text proposed by the Commission*

*Amendment*

***1a. The acquisition, use and disclosure of trade secrets shall be deemed lawful in so far as it is required by national or Union law, without prejudice to the rights of the holder.***

Or. fr

*Justification*

*Unrestricted use of lawfully acquired trade secrets is problematic, particularly in sectors where protection of intellectual property is not possible, even though substantial investments are made in the development of new products.*

**Amendment 170**  
**Julia Reda, Pascal Durand**

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

*Text proposed by the Commission*

*Amendment*

***1a. The acquisition, use and disclosure of trade secrets shall be considered lawful if such acquisition, use or disclosure is required or authorised by Union or national law or within the mandate of public institutions.***

Or. en

**Amendment 171**

**Emil Radev**

**Proposal for a directive**

**Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. An employer shall be presumed to be the holder of a trade secret developed by a worker when the trade secret is related to the worker's activities in the company.***

Or. bg