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AMENDMENTS 50 - 280

Draft opinion
Michèle Rivasi
(PE544.342v01-00)

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

Proposal for a directive
(COM(2013)0813 – C8-xxxx/2015 – 2013/0402(COD))

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Amendment 50

Michèle Rivasi

on behalf of the Verts/ALE Group

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.

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

Justification

Recitals should set out the concise reasons for the legal provisions. This descriptive text is therefore not necessary in a legal context, in particular since it provides a truncated view of the process of innovation. Indeed, trade secrets are a common reality to businesses but they are not necessarily connected to the production of innovation. Not all businesses holding trade secrets are creators. Pretending otherwise is generating misconceptions regarding the complex process of innovation.

Amendment 51

Michèle Rivasi

on behalf of the Verts/ALE Group

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.

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

Another is to protect access *and exploit the knowledge* that is valuable to the entity and not *widely* known. Such know-how and business information, that is undisclosed and intended to remain confidential is referred to as a trade secret. Businesses, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right and use confidentiality as a business and research innovation management tool, covering a diversified range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers, business plans or market research and strategies. By protecting such a wide range of know-how and commercial information, whether as a complement or as an alternative to intellectual property rights, trade secrets allow the creator to derive profit from his/her creation and innovations and therefore are particularly important for research and development and innovative performance.

is to protect access that is valuable to the entity and not *generally* known *among or readily accessible to persons within the circles that normally 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. 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.

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 52
Krišjānis Kariņš

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 intellectual property rights, trade secrets allow the creator to derive profit from his/her creation and innovations and therefore are particularly important for research and development and innovative performance.

Amendment

(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 ***and gives a competitive advantage***. 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 ***and determines their innovative performance***. 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 ***to commercially valuable information*** and exploit the knowledge that is valuable to the entity and not widely known ***to the society as a whole***. Such know-how and business information, that is undisclosed and intended to remain confidential is referred to as a trade secret. Businesses 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, ***either long-term or more short-lived. Especially small and medium-sized enterprises (SMEs) value and rely on trade secrets more, because the use of other formal intellectual property rights tend to be***

more expensive and SMEs often do not have sufficient specialized human or financial resources to record, manage and protect the intellectual property rights. By protecting such a wide range of know-how and **confidential** 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 53

Michèle Rivasi

on behalf of the Verts/ALE Group

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*

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 may have a role in protecting the exchange of knowledge between businesses within and across the*

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.*

borders of the internal market in the context of research and development and innovation.

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 54 **Krišjānis Kariņš**

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-

Amendment

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

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

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. *Existing Union legal framework against unlawful acquisition, use or disclosure of trade secrets by third parties is fragmented in 28 different laws, which creates barriers to effective functioning of internal market, while also reducing the trust of representatives of businesses and consumers.*

Or. en

Amendment 55

Philippe De Backer, Cora van Nieuwenhuizen, Kaja Kallas

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

Amendment

(2) Open innovation is an important lever for the creation of new knowledge and underpins the emergence of new and

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

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 *and/or research institutions* 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 56

Michèle Rivasi

on behalf of the Verts/ALE Group

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

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 have less security to engage in collaboration with cross-border partners, which undermine** the internal market.

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 57

Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) *International efforts taken in the framework of the World Trade Organisation to address this problem led to the conclusion of* the Agreement on trade-related aspects of intellectual property (the TRIPS Agreement). ***It*** contains, inter alia, provisions on the protection of trade secrets against their unlawful acquisition, use or disclosure by third parties, which are common international standards. All Member States, as well as the Union itself, are bound by this Agreement which was approved by Council Decision 94/800/EC⁵.

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

Amendment

(4) The Agreement on trade-related aspects of intellectual property (the TRIPS Agreement) contains, inter alia, provisions on the protection of trade secrets against their unlawful acquisition, use or disclosure by third parties, which are common international standards. All Member States, as well as the Union itself, are bound by this Agreement which was approved by Council Decision 94/800/EC⁵.

⁵ 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).

Or. en

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 58
Krišjānis Kariņš

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) International efforts taken in the framework of the World Trade Organisation to address this problem led to the conclusion of the Agreement on trade-related aspects of intellectual property (the TRIPS Agreement). It contains, inter alia, provisions on the protection of trade secrets against their unlawful acquisition, use or disclosure by third parties, which are common international standards. All Member States, as well as the Union itself, are bound by this Agreement which was approved by Council Decision 94/800/EC⁵.

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

Amendment

(4) 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/EC⁵.
In order to protect trade secrets against misappropriation, some Member States have legislation in place, however some Member states have not defined trade secrets and does not have binding legislation against misappropriation of trade secrets, which creates gaps and barriers to effectively functioning internal market.

⁵ 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).

Or. en

Amendment 59

Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 5

(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.

(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.

Or. en

Justification

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

Amendment 60

Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 7

(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 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***

(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 proved to be*** stolen or unlawfully acquired. On the whole, such differences create a prejudice to the proper functioning of the internal market.

secrets. On the whole, such differences create a prejudice to the proper functioning of the internal market.

Or. en

Justification

This recital addresses the problem of internal market fragmentation in the context of trade secrets. The purpose of the recitals is to set out concisely the reasons for the chief provisions of the enacting terms and not discussing innovation policy and what incentivises it or not. It therefore can be made shorter and more to the point.

Amendment 61 **Kaja Kallas**

Proposal for a directive **Recital 8**

Text proposed by the Commission

(8) It is appropriate to provide for rules at Union level to approximate the national legislative systems so as to ensure a sufficient and consistent level of redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret. For this purpose, it is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed as to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality. By nature, such definition should exclude trivial information and should not extend to the knowledge and skills gained by employees in the normal course of their employment and which are known among or accessible to persons within the circles that normally deal with

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.

the kind of information in question. *It is also appropriate to define at Union level the situations where the acquisition, use and disclosure of a trade secret is lawful and unlawful, and to limit the period of application of redress procedures, for the Directive to serve its purpose of consistent protection of trade secrets in the Union.*

Or. en

Justification

There is a necessity to have uniform rules on the definition, on what is lawful or unlawful, and on the limitation period to ensure that this proposal serves its purpose

Amendment 62

Philippe De Backer, Cora van Nieuwenhuizen, Angelika Mlinar

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) It is appropriate to provide for rules at Union level to approximate the national legislative systems so as to ensure a sufficient and consistent level of redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret. For this purpose, it is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed as to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality. By nature, such definition should exclude trivial information and should not extend to the knowledge and skills gained by employees in the normal

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 confidential know-how should furthermore have commercial value, whether actual or potential, insofar as its unlawful acquisition, use or***

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.

disclosure undermines the scientific and technical potential, business or financial interests, strategic positions or ability to compete of the trade secret holder. 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. en

Justification

It is also important to protect trade secrets during the stages of for instance R&D, in any other stage of the production process where the trade secret has not yet proven to have commercial value.

Amendment 63

Michèle Rivasi

on behalf of the Verts/ALE Group

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

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 keep confidential,*** and a

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.

legitimate expectation in the preservation of such confidentiality. By nature, such definition should exclude trivial information and should not extend to the knowledge and skills gained by employees in the normal course of their employment and which are known among or accessible to persons within the circles that normally deal with the kind of information in question **and by competitors**.

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 64 **Philippe De Backer**

Proposal for a directive **Recital 8 a (new)**

Text proposed by the Commission

Amendment

(8a) The obligations listed in Article 3(3) should not limit the use of the acquired experience and know-how by honest practices in the framework of a labour agreement or any other contractual relation. This should ensure that labour mobility will not be endangered while at the same time ensuring an adequate protection for trade secrets.

Or. en

Amendment 65 **Michèle Rivasi** on behalf of the Verts/ALE Group

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 Council⁶ or to other rules on the access to documents should not be considered unlawful disclosure of a trade secret.

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

Amendment

(9) It is also important to identify the circumstances under which legal protection is justified. For this reason, it is necessary to establish the conduct and practices which are to be regarded as unlawful acquisition, use or disclosure of a trade secret. Disclosure by Union's institutions and bodies or national public authorities of business-related information they hold pursuant to the obligations of Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁶ or to other rules on the access to documents should not be considered unlawful disclosure of a trade secret. ***Similarly, any information which disclosure is required by Union or national rules or by public authorities should not fall within the scope of this directive. It should also be the case of the protecting of legitimate 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.***

⁶ 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 66
Martina Werner

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 Council⁶ or to other rules on the access to documents ***should not*** be considered unlawful disclosure of a trade secret.

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

Amendment

(9) It is also important to identify the circumstances under which legal protection is justified. For this reason, it is necessary to establish the conduct and practices which are to be regarded as unlawful acquisition, use or disclosure of a trade secret. Disclosure by Union's institutions and bodies or national public authorities of business-related information they hold pursuant to the obligations of Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁶ or to other rules on the access to documents ***is not to*** be considered unlawful disclosure of a trade secret.

⁶ 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 67

Françoise Grossetête

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-

Amendment

(10) In the interest of innovation and to foster competition, the provisions of this Directive ***must*** not create any exclusive right on the know-how or information protected as trade secrets. ***These provisions may not be invoked solely in order to***

how and information remains possible and competitors of the trade secret holder are also free to reverse engineer any lawfully acquired product.

restrict competition. Thus, independent discovery of the same know-how and information remains possible and competitors of the trade secret holder are also free to reverse engineer any lawfully acquired product.

Or. fr

Justification

The use of the indicative makes for legal certainty in the area of trade relations.

Amendment 68 Martina Werner

Proposal for a directive Recital 10

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 69 Philippe De Backer

Proposal for a directive Recital 10

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 70

Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 10

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 71

Philippe De Backer, Angelika Mlinar, Kaja Kallas

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) The acquisition or disclosure of a trade secret by a public body, whether imposed or permitted by law, shall not constitute an unlawful use or disclosure. This acquisition or disclosure should however be clearly within the mandate of the respective public body, and outstepping this mandate will constitute an unlawful act.

Or. en

Justification

This amendment makes it explicit that companies cannot invoke the fact of something being a trade secret as an excuse not to hand over information to public bodies such as regulators. These public bodies however have to strictly operate within the boundaries of their mandate, and outstepping this mandate will constitute an unlawful act.

Amendment 72
Aldo Patriciello

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) The lawful acquisition of confidential commercial information or know-how cannot justify a subsequent use or disclosure constituting unfair competition contrary to honest industrial or commercial practices as defined in Article 10a of the Paris Convention. 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 73

Aldo Patriciello

Proposal for a directive

Recital 10 b (new)

Text proposed by the Commission

Amendment

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

Or. fr

Justification

Lawful acquisition, use or disclosure are not systematically linked and can, in practice, be followed by unlawful reuse or re-disclosure. If the right to information outweighs to a disproportionate extent the need to protect trade secrets, firms will be reluctant to divulge their confidential information to government institutions and the number of improper requests for access will increase.

Amendment 74

Philippe De Backer, Kaja Kallas

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 ***all relevant circumstances*** resulting in the use or disclosure of the trade secret as well as the impact of such ***use or disclosure***. It should also be ensured that the competent judicial authorities are provided with the discretion to weigh up the interests of the parties to the litigation, as well as the interests of third parties including, where appropriate, consumers.

Or. en

Amendment 75

Michèle Rivasi

on behalf of the Verts/ALE Group

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

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 consumer protection, health and environment protection***. In this respect, the measures and remedies ensure that competent judicial authorities account for the value of a trade secret, the

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.

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 76

Kaja Kallas

Proposal for a directive

Recital 11

Text proposed by the Commission

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

Amendment

(11) In line with the principle of proportionality the measures and remedies intended to protect trade secrets should be tailored to meet the objective of a smooth functioning internal market for research and innovation, ***in particular by having a deterrent effect against the unlawful acquisition, use and disclosure of a trade secret***, without jeopardising 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.

Or. en

Justification

The effectiveness of this legislative proposal lies with the deterrent effect against the misappropriation of a trade secret, as the use of litigation in itself will not meet the objective of a smooth functioning internal market

Amendment 77

Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) With the introduction and implementation of a uniform definition of trade secrets, and with the introduction and implementation of uniform rules for the protection of trade secrets within the internal market, other measures that directly or indirectly may restrict the sharing and use of knowledge and the hiring and mobility of labour, should respect the principle of proportionality in the interest of innovation and free competition.

Or. en

Amendment 78

Kaja Kallas

Proposal for a directive

Recital 12

Text proposed by the Commission

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

(12) The smooth functioning of the internal market would be undermined if the measures and remedies provided for were used to pursue illegitimate intents, ***such as creating unjustified barriers to the internal market or to labour mobility, that***

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.

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

Or. en

Amendment 79
Krišjānis Kariņš

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 80

Michèle Rivasi

on behalf of the Verts/ALE Group

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 secret by a third party.

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 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: this period should not be longer than a year. Generally, it is 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. This Directive should reflect this balance.***

Or. en

Amendment 81

Kaja Kallas

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 secret by a third party.

Amendment

(13) In the interest of ***preserving a smooth functioning of the internal market of research and innovation, of*** legal certainty and considering that legitimate trade secret holders are expected to exercise a duty of care as regards the preservation of the confidentiality of their valuable trade secrets and the monitoring of their use, it appears appropriate to restrict the possibility to initiate actions for the protection of trade secrets to a limited period following the date on which the trade secret holders became aware, or had reason to become aware, of the unlawful acquisition, use or disclosure of their trade secret by a third party.

Or. en

Justification

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

Amendment 82
Philippe De Backer

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,

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 access to evidence or hearings, or to publish only the non-confidential elements of judicial decisions. Such protection should remain in force after the legal proceedings have ended for as long as the information covered by the trade secret is not in the public domain.

thus jeopardising the effectiveness of the measures and remedies provided for. For this reason, it is necessary to establish, subject to appropriate safeguards ensuring the right to a fair trial, specific requirements aimed at protecting the confidentiality of the litigated trade secret in the course of legal proceedings instituted for its defence. These should include the possibility to restrict access to evidence or hearings, or to publish only the non-confidential elements of judicial decisions. ***To ensure a sufficient access to information, in cases where access is restricted, at least one person from each party and its respective lawyer should have access to evidence or hearings.*** Such protection should remain in force after the legal proceedings have ended for as long as the information covered by the trade secret is not in the public domain.

Or. en

Amendment 83

Dario Tamburrano, Marco Zullo

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

Amendment

(14) The prospect of losing the confidentiality of a trade secret during litigation procedures often deters legitimate trade secret holders from instituting proceedings to defend their trade secrets, thus jeopardising the effectiveness of the measures and remedies provided for. For this reason, it is necessary to establish ***a balance between*** appropriate safeguards ensuring the right to a fair trial ***and*** specific requirements aimed at protecting the confidentiality of the litigated trade secret in the course of legal proceedings instituted for its defence. These should include the

possibility to restrict access to evidence or hearings, or to publish only the non-confidential elements of judicial decisions. Such protection should remain in force after the legal proceedings have ended for as long as the information covered by the trade secret is not in the public domain.

possibility to restrict access to evidence or hearings ***for persons not connected with the parties***, or to publish only the non-confidential elements of judicial decisions. 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.

Or. it

Justification

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

Amendment 84

Michèle Rivasi

on behalf of the Verts/ALE Group

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

deleted

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.

Or. en

Justification

This provision is too far reaching and unbalanced. It can very likely lead to abuses and anti-competitive actions, especially against SMEs, the effect of which will not be able to be balanced retrospectively.

Amendment 85

Philippe De Backer, Kaja Kallas

Proposal for a directive

Recital 15

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 86
Kaja Kallas

Proposal for a directive
Recital 16

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

if the defendant no longer gains a commercial advantage from the misappropriation, the further extension of an injunction only serves the purpose of deterrence and sanction while in the meantime hindering competition and innovation.

Amendment 87
Michèle Rivasi
on behalf of the Verts/ALE Group

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

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.

components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the functioning of the internal market. In *the* cases *where unlawful acquisition has been demonstrated* and when the trade secret in question has a significant impact on the quality, value or price of the resulting good or on reducing the cost, facilitating or speeding up its manufacturing or marketing processes, it is important to empower judicial authorities to order appropriate measures with a view to ensure that those goods are not put on the market or are removed from it. Considering the global nature of trade, it is also necessary that these measures include the prohibition of importing those goods into the Union or storing them for the purposes of offering or placing them on the market. Having regard to the principle of proportionality, corrective measures should not necessarily entail the destruction of the goods when other viable options are present, such as depriving the good of its infringing quality or the disposal of the goods outside the market, for example, by means of donations to by charitable organisations.

Or. en

Amendment 88

Kaja Kallas

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, **develop** or market **services or** goods, or components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the

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.

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.

Or. en

Justification

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

Amendment 89 **Kaja Kallas**

Proposal for a directive **Recital 19**

Text proposed by the Commission

(19) In order to avoid that a person who knowingly, or with reasonable grounds for knowing, unlawfully acquires, uses or discloses a trade secret benefit from such conduct and to ensure that the injured trade

Amendment

(19) In order to avoid that a person who knowingly, or with reasonable grounds for knowing, unlawfully acquires, uses or discloses a trade secret benefit from such conduct and to ensure that the injured trade

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

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

Or. en

Justification

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

Amendment 90
Kaja Kallas

Proposal for a directive
Recital 20

Text proposed by the Commission

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

Amendment

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

There is also a necessity to raise awareness, especially for small and medium-sized businesses, of the availability of redress and remedies in cases of unlawful acquisition, use or disclosure of trade secrets.

Or. en

Amendment 91

Kaja Kallas

Proposal for a directive

Recital 22

Text proposed by the Commission

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

Amendment

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

Rights, should examine the application of this Directive and the effectiveness of the national measures taken.

Or. en

Justification

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

Amendment 92

Kaja Kallas

Proposal for a directive

Recital 22

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 93

Martina Werner, Sergio Gaetano Cofferati

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 to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to good administration, access to file and preservation of secrecy of business, the right to an effective remedy and to a fair trial and right of defence. ***Thus the provisions of this Directive should not apply, if the disclosure of undisclosed information is in the overriding public interest or can be considered as a fundamental right.***

Or. en

Amendment 94

Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 23

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 95

Kaja Kallas

Proposal for a directive

Recital 27

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 96
Martina Werner, Sergio Gaetano Cofferati

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. It does also not affect the right of workers' representatives to the acquisition and disclosure of trade secrets in the context of the exercise of their rights to information, consultation and participation in accordance with Union and national law and practises.

Or. en

Amendment 97
Michèle Rivasi
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) The measures provided for in this 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 98
Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive
Recital 28

Text proposed by the Commission

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

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

Amendment

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

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

Or. en

Amendment 99
Sampo Terho, Henna Virkkunen

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 100
Françoise Grossetête

Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The objective of the proposed directive should be to create minimum standards of protection of trade secrets in the Member States, in accordance with the principle of minimum harmonization. The Directive should not affect the possibility of Member States to maintain or adopt a higher level of protection.

Amendment 101
Michèle Rivasi
on behalf of the Verts/ALE Group

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 102
Olle Ludvigsson

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 103
Aldo Patriciello

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

Text proposed by the Commission

Amendment

This Directive shall not prevent Member States from adopting, or continuing to take, more restrictive measures, in accordance with the Treaties and with this Directive, against the acquisition, use, or disclosure of trade secrets.

Or. it

Amendment 104
Kaja Kallas

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

Text proposed by the Commission

Amendment

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

(1) ‘trade secret’ means ***undisclosed know-how and business*** information which

meets all of the following requirements:

Or. en

Amendment 105

Adam Gierek

Proposal for a directive

Article 2 – paragraph 1 – point 1 – introductory part

Text proposed by the Commission

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

Amendment

(1) ‘trade secret’ means ***all proprietary production- and market-related*** information ***held by firms*** which meets all of the following requirements:

Or. pl

Justification

We are obviously not talking about all information, but only proprietary information directly linked to market- and trade-related activities.

Amendment 106

Adam Gierek

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point a

Text proposed by the Commission

(a) is secret in the sense that it is not, ***as a body or in the precise configuration and assembly of its components, generally known among or readily*** accessible to persons within the circles that ***normally*** deal with the kind of information in question;

Amendment

(a) is secret in the sense that it is not, ***taken as a whole, as a new item of marketable value***, accessible to persons within the circles that ***directly or indirectly, depending on their links with the market,*** deal with the kind of information in question;

Or. pl

Justification

The information could even be known to a broad circle of people who have no links with the market (e.g. academics) but not be generally available for use on the market.

Amendment 107

José Blanco López

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point a

Text proposed by the Commission

a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

Amendment

a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question ***or any person who could obtain economic value from its disclosure or use;***

Or. es

Amendment 108

Adam Gierek

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point b

Text proposed by the Commission

(b) has commercial value because it is secret;

Amendment

(b) is a set of information which is not, but could potentially be, covered by intellectual property rights, but which, before it is registered and becomes the subject of official patents, industrial designs and copyright, cannot be deemed equivalent thereto;

Or. pl

Justification

Information protected as intellectual property cannot be subject to trade secrecy. However, that possibility cannot be ruled out as long as the information has not been officially registered as subject to intellectual property protection (by the Patent Office).

Amendment 109

Martina Werner

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point b

Text proposed by the Commission

b) has commercial value because it is secret;

Amendment

b) has commercial value because it is secret *and the legal entity has a legitimate interest in its non-disclosure*;

Or. de

Amendment 110

Krišjānis Kariņš

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point b

Text proposed by the Commission

(b) has commercial value because it is secret;

Amendment

(b) has commercial value because it is secret *and has an economic benefit to it, which turns the secret into a competitive advantage*;

Or. en

Amendment 111

Françoise Grossetête

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point b

Text proposed by the Commission

Amendment

(b) has commercial value because it is secret;

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

Or. en

Justification

We should precise the commercial value which may be actual or potential.

Amendment 112

Adam Gierek

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point c

Text proposed by the Commission

Amendment

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

(c) has been subject to ***official registration, with a general description of what it covers and other*** steps ***required to keep it secret***, by the person ***legally established as being*** in control of the information.

Or. pl

Justification

The information must have been officially registered as a trade secret by the person lawfully in control of it.

Amendment 113

Aldo Patriciello

Proposal for a directive

Article 2 – paragraph 1 – point 1 – point c

Text proposed by the Commission

Amendment

c) has been subject to reasonable steps under the circumstances, by ***the person***

c) has been subject to reasonable steps under the circumstances, by ***their holder***,

lawfully in control of the information, to
keep it secret.

to keep it secret;

Or. fr

Justification

Replacing the words 'the person lawfully in control of the information' by the words 'the holder' will ensure that Articles 2(1)(c) and 2(2) do not provide circular definitions.

Amendment 114

Adam Gierek

Proposal for a directive

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

Text proposed by the Commission

Amendment

*(ca) taken as a whole, as a compilation of
known solutions, it can constitute a new
qualitatively unique production and
market structure;*

Or. pl

Justification

These are organisational arrangements that cannot be deemed an innovation in physical and chemical terms.

Amendment 115

Adam Gierek

Proposal for a directive

Article 2 – paragraph 1 – point 2

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 116

Adam Gierek

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 *market operator who, either directly or through a third party, has gained access to a specific trade secret and has used it or disclosed it to the commercial detriment of the secret's holder.*

Justification

Use of the trade secret must result in financial losses on the market.

Amendment 117

Adam Gierek

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

deleted

Justification

We are not talking about goods here, or their physical form, because if that were the case the only thing that could be infringed would be intellectual property rights. What we are talking about is goods manufactured in breach of a legally registered trade secret. The design, quality and manufacturing process may be covered by existing or potential intellectual property rights, and as such cannot be the subject of a trade secret.

Amendment 118

Aldo Patriciello

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 **or services**’ means goods **or services** whose quality, **characteristics** or marketing benefits 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. As soon as a product benefits, ‘significantly’ or otherwise, from a trade secret which has been unlawfully acquired, it is infringing.

Amendment 119

Aldo Patriciello

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

Amendment

4) ‘infringing goods’ means goods whose design, quality, **characteristics**, **functioning**, manufacturing process or marketing benefits from trade secrets

disclosed.

unlawfully acquired, used or disclosed.

Or. fr

Justification

Adding the terms ‘characteristics’ and ‘functioning’ extends the scope of the provision to cover aspects other than the quality of products. As soon as a product benefits, ‘significantly’ or otherwise, from a trade secret which has been unlawfully acquired, it is infringing.

Amendment 120

José Blanco López

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 whose design, quality, manufacturing process or marketing significantly benefits from trade secrets unlawfully acquired, used or disclosed, ***regardless of whether or not they are placed on the market.***

Or. es

Amendment 121

Philippe De Backer, Cora van Nieuwenhuizen

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 **products or services** whose **characteristics**, quality, manufacturing process or marketing significantly benefits from trade secrets unlawfully acquired, used or disclosed.

Or. en

Amendment 122
Adam Gierek

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 ***its*** holder shall be considered unlawful ***where there is***:

Or. pl

Justification

What is involved here is unlawful use of both plans and all steps involved in placing the goods on the market.

Amendment 123
Aldo Patriciello

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 by:

Or. fr

Justification

Intention or gross negligence is irrelevant in the context of the unlawful acquisition of trade secrets.

Amendment 124
Ashley Fox

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 by:

Or. en

Amendment 125
Françoise Grossetête

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 by:

Or. en

Justification

These requirements seem superfluous, and could be very difficult for a business, particularly an SME, to prove.

Amendment 126
Kaja Kallas

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

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

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

Amendment 127

Adam Gierek

Proposal for a directive

Article 3 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

(a) **unlawful** access to or copy of any documents, objects, materials, substances **and** electronic files under the **legally established** control of the trade secret holder;

Or. pl

Justification

What is at issue here is not only the protection of confidential information but also the theft of documentation belonging to someone else.

Amendment 128

Kaja Kallas

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. en

Justification

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

Amendment 129
Philippe De Backer

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, ***copy or appropriation*** 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;

Or. en

Amendment 130
José Blanco López

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

Text proposed by the Commission

a) unauthorised access to or copy of any

Amendment

a) unauthorised access to or copy of any

documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

trade secret, whether in the form of
documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

Or. es

Amendment 131
Martina Werner

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

Text proposed by the Commission

Amendment

(b) theft;

deleted

Or. en

Amendment 132
Philippe De Backer

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

Text proposed by the Commission

Amendment

(b) theft;

deleted

Or. en

Justification

This deleted item is already covered under (f) of this article.

Amendment 133
Martina Werner

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

Text proposed by the Commission

Amendment

(c) bribery;

deleted

Or. en

Amendment 134
Philippe De Backer

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

Text proposed by the Commission

Amendment

(c) bribery;

deleted

Or. en

Justification

This deleted item is already covered under (f) of this article.

Amendment 135
Martina Werner

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

Text proposed by the Commission

Amendment

(d) deception;

deleted

Or. en

Amendment 136
Philippe De Backer

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

Text proposed by the Commission

Amendment

(d) deception;

deleted

Or. en

Justification

This deleted item is already covered under (f) of this article.

Amendment 137

Philippe De Backer

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;

deleted

Or. en

Justification

This deleted item is already covered under (f) of this article.

Amendment 138

Adam Gierek

Proposal for a directive

Article 3 – paragraph 2 – point e

Text proposed by the Commission

Amendment

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

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

Or. pl

Justification

A distinction needs to be made between confidentiality and secrecy.

Amendment 139

Adam Gierek

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. pl

Justification

Too general. It needs to be made clear exactly what conduct and practices are involved.

Amendment 140

Martina Werner

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 141

Krišjānis Kariņš

Proposal for a directive

Article 3 – paragraph 2 – point f

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 142

Adam Gierek

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. ***Unauthorised*** disclosure of a trade secret ***take place where***, without the consent of ***its*** holder, ***a legal or natural person who has had access to trade documentation belonging to the firm or to other proprietary sources*** intentionally or ***as a result of*** gross negligence:

Or. pl

Justification

Unauthorised, i.e. unlawful, disclosure of a trade secret is always carried out without the consent of its holder.

Amendment 143

Aldo Patriciello, Françoise Grossetête

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

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:

secret holder by a person who is found to meet any of the following conditions:

Or. fr

Justification

Intention or gross negligence is irrelevant in the context of the unlawful use or disclosure of trade secrets.

Amendment 144

Ashley Fox

Proposal for a directive

Article 3 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 145

Kaja Kallas

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*** by a person who is found to meet any of the following conditions:

Justification

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

Amendment 146

Adam Gierek

Proposal for a directive

Article 3 – paragraph 3 – point a

Text proposed by the Commission

(a) has acquired the trade secret unlawfully;

Amendment

(a) has acquired ***and used a specific*** trade secret unlawfully;

Or. pl

Justification

It will need to be specified in court exactly what the trade secret is.

Amendment 147

Adam Gierek

Proposal for a directive

Article 3 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

(b) is in breach of ***the limits and other terms established by a legal agreement*** to maintain ***confidentiality***;

Or. pl

Justification

Agreements to maintain confidentiality should have proper legal status.

Amendment 148
Kaja Kallas

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

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

There is a need to clarify the meaning of "maintaining secrecy" by restricting this term to a duty to limit the use or disclosure of the trade secret

Amendment 149
Adam Gierek

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

deleted

Or. pl

Justification

What exactly does 'any other duty' mean? It is far from clear. And what does 'limit the use' mean?

Amendment 150
Kaja Kallas

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 limit the use **or disclosure** of the trade secret.

Or. en

Amendment 151
Aldo Patriciello

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

Text proposed by the Commission

Amendment

ca) has acquired the trade secret lawfully but uses or discloses it in a manner contrary to honest commercial practices and likely to harm the commercial interests of the 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 152
Aldo Patriciello

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

Text proposed by the Commission

Amendment

3a. The obligations laid down in paragraph 3 may not arbitrarily limit the

use of experience acquired honestly through employment or some other contractual relationship. The rules on collective agreements and national labour law systems shall not be affected.

Or. fr

Justification

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

Amendment 153

Adam Gierek

Proposal for a directive

Article 3 – paragraph 4

Text proposed by the Commission

4. *The* use or disclosure of a trade secret shall *also be considered unlawful whenever* a person, *at the time of use or disclosure, knew or should, under the circumstances, have known that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully within the meaning of the paragraph 3.*

Amendment

4. Use or disclosure of a trade secret shall *be taken to have started at the time when a natural person or market operator first made unauthorised use of it on the market.*

Or. pl

Justification

It needs to be clearly established exactly when the theft of a trade secret is considered to have taken place.

Amendment 154

Aldo Patriciello

Proposal for a directive

Article 3 – paragraph 4

Text proposed by the Commission

4. The use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of use or disclosure, knew or should, under the circumstances, have known that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully within the meaning of the paragraph 3.

Amendment

4. The use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of use or disclosure, knew or should, under the circumstances, have known that the trade secret was obtained ***directly or indirectly*** from another person who was using or disclosing the trade secret unlawfully within the meaning of the paragraph 3.

Or. fr

Justification

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

Amendment 155

Ashley Fox

**Proposal for a directive
Article 3 – paragraph 4**

Text proposed by the Commission

4. The use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of use or disclosure, knew or should, under the circumstances, have known that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully within the meaning of the paragraph 3.

Amendment

4. The use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of use or disclosure, knew or should, under the circumstances, have known that the trade secret was obtained ***directly or indirectly*** from another person who was using or disclosing the trade secret unlawfully within the meaning of the paragraph 3.

Or. en

Amendment 156

Adam Gierek

Proposal for a directive
Article 3 – paragraph 5

Text proposed by the Commission

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.

deleted

Or. pl

Justification

There is no such thing as ‘infringing goods’, and even where goods look exactly like other goods that have been manufactured on the basis of a trade secret, an infringement cannot be deemed to have occurred. Infringements can take place only where goods have been manufactured in breach of someone else’s intellectual property rights or where it is clear that unauthorised use has been made of a qualitatively unique production and market structure.

Amendment 157
Aldo Patriciello

Proposal for a directive
Article 3 – paragraph 5

Text proposed by the Commission

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.

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

Or. fr

Justification

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

Amendment 158

Ashley Fox

Proposal for a directive

Article 3 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 159

Philippe De Backer, Cora van Nieuwenhuizen, Kaja Kallas

Proposal for a directive

Article 3 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Amendment 160
Adam Gierek

Proposal for a directive
Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. pl

Justification

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

Amendment 161
Adam Gierek

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

Text proposed by the Commission

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

Amendment

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

Or. pl

Justification

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

Amendment 162
Adam Gierek

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 is lawfully in the possession of *a natural person or market operator with access to independent technological discoveries and designs and goods manufactured on the basis thereof*;

Or. pl

Justification

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

Amendment 163
Aldo Patriciello

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*;

Or. fr

Justification

This amendment provides for the possibility of limiting contractually the information which may be obtained by means of reverse engineering.

Amendment 164

Philippe De Backer, Cora van Nieuwenhuizen

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 ***and is not under any legal obligation to limit the acquisition of the trade secret.***

Or. en

Amendment 165

Ashley Fox

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;***

Or. en

Amendment 166
Philippe De Backer

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

Justification

covered by AM 18

Amendment 167
Olle Ludvigsson

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) **workers representatives' acquisition
and disclosure of trade secrets in the
context of the** exercise of the **rights** of
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 168
Kaja Kallas

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

Many small companies do not have workers representatives

Amendment 169
Michèle Rivasi
on behalf of the Verts/ALE Group

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 170
Rolandas Paksas

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

Text proposed by the Commission

Amendment

(ca) performance of the accountability requirements imposed on boards of directors or supervisory boards;

Or. lt

Amendment 171
Martina Werner

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

Text proposed by the Commission

Amendment

(ca) required or allowed by Union or national law.

Or. en

Amendment 172
Martina Werner

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 173
Aldo Patriciello

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 regarded as lawful if it is required under national or Union law, the rights of the holder notwithstanding.

Or. fr

Justification

L'utilisation illimitée de secrets d'affaires obtenus licitement est problématique, en particulier dans des secteurs comme celui de l'industrie cosmétique où aucune protection de la propriété intellectuelle n'est possible, alors même que de considérables investissements sont faits pour développer de nouveaux produits. L'obtention, l'utilisation et la divulgation de secrets d'affaires, tant bien même qu'elles soient requises par le droit national ou de l'Union, ne saurait se faire au détriment ou en déséquilibre de droits du détenteur, en particulier droits de propriété intellectuelle ou de la concurrence.

Amendment 174

Philippe De Backer, Angelika Mlinar

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 to the extent that such acquisition, use or disclosure is required or allowed by Union or national law.

Or. en

Amendment 175

Ashley Fox

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 to the extent that such acquisition, use or disclosure is required or allowed by Union or national law.

Or. en

Amendment 176
Philippe De Backer

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 177
Sampo Terho, Henna Virkkunen

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

Text proposed by the Commission

Amendment

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

(a) for making legitimate use of the right to freedom of expression and information, ***except in cases where such freedom is limited with a secrecy obligation following from an employment relationship;***

Or. en

Amendment 178
Aldo Patriciello

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

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

The exceptions provided for by the directive must be clarified and defined more restrictively in order not to undermine the protection of trade secrets.

Amendment 179
Sampo Terho, Henna Virkkunen

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

Text proposed by the Commission

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

Amendment

(b) for the purpose of revealing an applicant's illegal activity **to the competent authority;**

Or. en

Amendment 180
Martina Werner

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

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 181
Aldo Patriciello

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

Text proposed by the Commission

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

Amendment

c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions, ***provided that such disclosure was strictly confined to and necessary for that exercise;***

Or. fr

Justification

The exceptions provided for by the directive must be clarified and defined more restrictively in order not to undermine the protection of trade secrets.

Amendment 182
Philippe De Backer, Kaja Kallas

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 183

Aldo Patriciello

Proposal for a directive

Article 4 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

deleted

Or. fr

Justification

The exceptions provided for by the directive must be clarified and defined more restrictively in order not to undermine the protection of trade secrets.

Amendment 184

Martina Werner

Proposal for a directive

Article 4 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 185

Kaja Kallas

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

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

This provision is too broad and can be abused

Amendment 186
Adam Gierek

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

Text proposed by the Commission

Amendment

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

(e) where a claimed infringement of a trade secret concerns, by chance, part or all of a set of information obtained independently or where that information is the subject of a patent, copyright, industrial design or trade mark of a company.

Or. pl

Justification

Information previously protected as intellectual property cannot be subject to trade secrecy.

Amendment 187
Martina Werner

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

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 188

Aldo Patriciello

Proposal for a directive

Article 4 – paragraph 2 – point e

Text proposed by the Commission

Amendment

e) for the purpose of protecting a legitimate interest.

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

Or. fr

Justification

The exceptions provided for by the directive must be clarified and defined more restrictively in order not to undermine the protection of trade secrets.

Amendment 189

Philippe De Backer

Proposal for a directive

Article 4 – paragraph 2 – point e

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 190
Rolandas Paksas

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

Text proposed by the Commission

Amendment

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

Or. lt

Amendment 191
Aldo Patriciello

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

Text proposed by the Commission

Amendment

2a. The means and exceptions referred to in Article 4 shall apply only in so far as they are in conformity with honest commercial practices and do not confer any unfair competitive advantage.

Or. fr

Justification

Seeks to prevent the exceptions provided by Article 4 from being used in an unfair or improper manner.

Amendment 192
Martina Werner, Sergio Gaetano Cofferati

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 193

Kaja Kallas

Proposal for a directive

Article 6 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 194

Martina Werner

Proposal for a directive

Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) provides for safeguards against their abuse.

Amendment

(c) provides for safeguards against their abuse ***especially in case of abusive wrongful accusation.***

Or. en

Amendment 195

Ashley Fox

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

Member States shall ***lay down the rules applicable to limitation periods for substantive claims or bringing*** actions for the application of the measures, procedures and remedies provided for in this Directive. ***Those rules shall determine when the limitation period begins to run, the duration of the limitation period and the circumstances under which the limitation period is interrupted or suspended. The duration of the limitation period shall not exceed six years.***

Or. en

Amendment 196

Philippe De Backer, Cora van Nieuwenhuizen

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 197

Sampo Terho, Henna Virkkunen

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 198
Aldo Patriciello

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

By way of comparison, the time limit is three years in the USA. The time limit must be the same in all the Member States. However, the margin of discretion in determining the 'last fact' may allow this deadline to be extended by several months or even years in practice.

Amendment 199
Janusz Lewandowski

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. pl

Justification

The two-year time limit proposed is too short.

Amendment 200
Martina Werner

Proposal for a directive
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 201
Dario Tamburrano, Marco Zullo

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. it

Justification

Parties have the right to be informed by their legal representatives about facts relevant to the proceedings and, of course, to the trade secrets concerned. Lawyers should never be prevented from fulfilling this obligation incumbent upon them.

Amendment 202
Martina Werner

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret, or who has access to documents which form part of those legal proceedings, shall not be permitted to use or disclose any trade secret or alleged trade secret ***which the competent judicial authorities have identified as confidential after consultation of the parties and*** of which

they have become aware as a result of such participation or access.

Or. en

Amendment 203

Philippe De Backer, Cora van Nieuwenhuizen, Kaja Kallas

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

Clarification of language

Amendment 204

Aldo Patriciello

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

The confidentiality of trade secrets (and presumed trade secrets) must be guaranteed throughout the legal proceedings until the final decision.

Amendment 205

Aldo Patriciello

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

The confidentiality of trade secrets (and presumed trade secrets) must be guaranteed throughout the legal proceedings until the final decision.

Amendment 206

Françoise Grossetête

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Justification

The holder of a trade secret used or referred to in the course of legal proceedings should be able to request that necessary measures be taken to preserve its confidentiality even if he or she is not party to those proceedings.

Amendment 207
Philippe De Backer

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 208
Martina Werner

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part, ***provided that each party, its respective lawyer or representative to the proceedings and court officials are given***

full access to such document;

Or. en

Amendment 209

Sampo Terho, Henna Virkkunen

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part, ***on the understanding that there is no limitations to the access of each party involved or its representative;***

Or. en

Amendment 210

Dario Tamburrano, Marco Zullo

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part, ***provided that each of the parties, their lawyers or representatives in the proceedings, their experts, and court officials have been given full access to that document;***

Or. it

Justification

Parties have the right to participate in proceedings in which they are involved and to be

expressly informed by their legal representatives, and, moreover, by means of expert advice, about every fact relevant to the proceedings and, of course, to the trade secrets concerned. Lawyers should never be prevented from fulfilling this obligation incumbent upon them.

Amendment 211
Philippe De Backer

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part, ***as long as at least one person of each party or their respective lawyers have full access to such document;***

Or. en

Amendment 212
Dario Tamburrano, Marco Zullo

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) to restrict access to hearings, when trade secrets may be disclosed, and their corresponding records or transcript, ***provided that each of the parties, their lawyers or representatives in the proceedings, their experts, and court officials have been given full access to those hearings, records, or transcripts;***

Or. it

Justification

Parties have the right to participate in proceedings in which they are involved and to be expressly informed by their legal representatives, and, moreover, by means of expert advice, about every fact relevant to the proceedings and, of course, to the trade secrets concerned. Lawyers should never be prevented from fulfilling this obligation incumbent upon them.

Amendment 213 **Martina Werner**

Proposal for a directive **Article 8 – paragraph 2 – subparagraph 2 – point b**

Text proposed by the Commission

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

Amendment

*(b) to restrict access to hearings, when trade secrets may be disclosed, and their corresponding records or transcript, **provided that each party, its respective lawyer or representative to the proceedings and court officials are given full access to such hearing, records or transcript;***

Or. en

Amendment 214 **Martina Werner**

Proposal for a directive **Article 8 – paragraph 2 – subparagraph 3**

Text proposed by the Commission

Where, because of the need to protect a trade secret or an alleged trade secret and pursuant to point (a) of the second subparagraph of this paragraph, the competent judicial authority decides that evidence lawfully in control of a party

Amendment

deleted

shall not be disclosed to the other party and where such evidence is material for the outcome of the litigation, the judicial authority may nevertheless authorise the disclosure of that information to the legal representatives of the other party and, where appropriate, to authorised experts subject to the confidentiality obligation referred to in paragraph 1.

Or. en

Amendment 215
Philippe De Backer

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 216
Aldo Patriciello

Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

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

Amendment 217
Ashley Fox

Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 218
Adam Gierek

Proposal for a directive
Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that the competent judicial authorities may, ***where there is proof of infringement of a*** trade secret, order any of the following measures against the infringer:

Or. pl

Justification

Fault must be established first.

Amendment 219
Adam Gierek

Proposal for a directive
Article 9 – paragraph 1 – point a

Text proposed by the Commission

(a) the cessation of ***or, as the case may be, the prohibition of the*** use ***or disclosure*** of the trade secret ***on an interim basis***;

Amendment

(a) the cessation of the use of the trade secret ***and its disclosure***;

Or. pl

Justification

A court may take such a decision where fault has been proven.

Amendment 220
Adam Gierek

Proposal for a directive
Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) the prohibition to ***produce, offer***, place on the market ***or use infringing goods, or*** import, export or store infringing goods ***for those purposes***;

Amendment

(b) the prohibition to place on the market, import, export or store infringing goods;

Or. pl

Justification

An infringement is established to have taken place when there is proof that competing goods were placed on the market as the result of a stolen trade secret.

Amendment 221
Adam Gierek

Proposal for a directive
Article 9 – paragraph 1 – point c

Text proposed by the Commission

(c) ***the seizure or delivery of the suspected infringing goods, including imported goods, so as to prevent their entry into or circulation within the market.***

Amendment

deleted

Or. pl

Justification

In the interests of the smooth functioning of the market, suspicion alone is not enough. There must be proof that theft has been committed.

Amendment 222
Michèle Rivasi
on behalf of the Verts/ALE Group

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that the competent judicial authorities have the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves that a trade secret exists, that the applicant is the legitimate trade secret holder and that the trade secret has been acquired unlawfully, that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent.

Or. en

Justification

In coherence with AM 44, reference to article 9 should be deleted. The authority to require applicants to provide evidence should be ensured in any circumstance.

Amendment 223
Aldo Patriciello

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

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

Or. fr

Justification

Apart from the deletion of the word ‘legitimate’, this amendment is a linguistic change to the French version, seeking to align it with the English version.

Amendment 224
Kaja Kallas

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that the competent judicial authorities have, in respect of the measures referred to in Article 9, the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves that ***the know-how or business information involved qualifies as*** a trade secret, that the applicant is the legitimate trade secret holder and that the trade secret has been acquired unlawfully, that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent.

Or. en

Justification

There is a necessity to clarify that the burden of proof is on the applicant to prove that the know-how or information at stake qualifies as a trade secret

Amendment 225
Ashley Fox

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that the competent judicial authorities have, in respect of the measures referred to in Article 9, the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves ***with a sufficient degree of certainty*** that a trade secret exists, that the applicant is the legitimate trade secret holder and that the trade secret has been acquired unlawfully, that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent.

Or. en

Amendment 226
Ashley Fox

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial authorities shall be required to take into account the value of the trade secret, the measures taken to protect the trade secret, the conduct of the respondent in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the

Amendment

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial authorities shall be required to take into account the ***specific circumstances of the case. This assessment shall include, where appropriate,*** value of the trade secret, the measures taken to protect the trade secret, ***or other specific features of the trade secret,*** the conduct of the respondent in acquiring, disclosing or using of the trade

granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, ***including freedom of expression and information.***

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

Or. en

Amendment 227

Martina Werner

Proposal for a directive

Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 228

Philippe De Backer, Cora van Nieuwenhuizen, Kaja Kallas

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

This article should allow the judicial authorities to take into account all specific aspects of a case, and this text should not a priori limit a judge's scope of assessment.

Amendment 229

Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive
Article 10 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the interim measures referred to in Article 9 are revoked or otherwise cease to have

Amendment

deleted

effect, upon request of the respondent, if:

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

(b) in the meantime, the information in question no longer fulfils the requirements of point (1) of Article 2, for reasons that cannot be attributed to the respondent.

Or. en

Justification

In coherence with AM 44

Amendment 230

Adam Gierek

Proposal for a directive

Article 10 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States shall ensure that the interim measures *referred to in Article 9 are revoked or otherwise cease to have effect, upon request of the respondent, if:*

Amendment

3. Member States shall ensure that the *competent judicial authorities are able to take* interim measures, *once a court has found that trade rights have been infringed and once the court's decision is final and binding, to stop further damage being suffered by the applicant and to secure appropriate compensation from the* respondent.

Or. pl

Justification

Sanctions should only be imposed where a court has found a party guilty.

Amendment 231

Adam Gierek

Proposal for a directive

Article 10 – paragraph 3 – point a

Text proposed by the Commission

Amendment

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

deleted

Or. pl

Justification

This goes without saying, as the respondent has the right to appeal.

Amendment 232

Dario Tamburrano, Marco Zullo

Proposal for a directive

Article 10 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority, within a reasonable period determined by the judicial authority ordering the measures where the law of a

(a) the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority, within a reasonable period determined by the judicial authority ordering the measures where the law of a

Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer;

Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer, ***commencing on the date of the ruling by the judicial authority***;

Or. it

Justification

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

Amendment 233

Adam Gierek

Proposal for a directive

Article 10 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) in the meantime, the information in question no longer fulfils the requirements of point (1) of Article 2, for reasons that cannot be attributed to the respondent. ***deleted***

Or. pl

Justification

If the matter is no longer current, what is the point of referring to it?

Amendment 234

Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive

Article 10 – paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Justification

In coherence with AM 44

Amendment 235

Adam Gierek

**Proposal for a directive
Article 10 – paragraph 4**

Text proposed by the Commission

Amendment

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

4. Interim measures concerning securities and assurances shall not be applied before a court has found unequivocally that a trade secret has been illegally infringed and established the date of the infringement.

Or. pl

Justification

Where any interim measures are taken, very careful attention needs to be paid to the final decision of the court, since it is also possible for the applicant to act with criminal intent.

Amendment 236

Michèle Rivasi

on behalf of the Verts/ALE Group

Proposal for a directive

Article 10 – paragraph 5

Text proposed by the Commission

Amendment

5. Where the interim measures are revoked on the basis of point (a) of paragraph 3, where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no unlawful acquisition, disclosure or use of the trade secret or threat of such conduct, the competent judicial authorities shall have the authority to order the applicant, upon request of the respondent or of an injured third party, to provide the respondent, or the injured third party, appropriate compensation for any injury caused by those measures.

deleted

Or. en

Justification

In coherence with AM 45.

Amendment 237

Miriam Dalli

Proposal for a directive

Article 10 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Once the competent judicial authorities are satisfied that a trade secret exists, that the applicant is the legitimate trade secret holder and that an unlawful acquisition, use or disclosure of the trade secret is imminent, the interim

precautionary measures referred to in Article 9 of this Directive shall apply and no other measures foreseen in other Directives shall come into force.

Or. en

Justification

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

Amendment 238

Dario Tamburrano, Marco Zullo

Proposal for a directive

Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. it

Justification

No injunctions or corrective measures should be enforced against an infringer until the relevant ruling has become final, bearing in mind they could entail adverse effects.

Amendment 239

Adam Gierek

Proposal for a directive
Article 11 – paragraph 1 – point a

Text proposed by the Commission

(a) the cessation of ***or, as the case may be, the prohibition of the*** use ***or disclosure*** of the trade secret;

Amendment

(a) the cessation of the use of the trade secret ***from the date on which the judicial decision becomes final and binding, and depriving infringing goods placed on the market of the qualities that can demonstrate that the infringement took place;***

Or. pl

Justification

The law here cannot apply to undefined circumstances on the market. It can only apply following a direct judicial decision as to which goods were illegally placed on the market.

Amendment 240
Adam Gierek

Proposal for a directive
Article 11 – paragraph 1 – point b

Text proposed by the Commission

(b) the ***prohibition to produce, offer, place on the market or use*** infringing goods, ***or import, export or store infringing goods for those purposes;***

Amendment

(b) the ***withdrawal from*** the market ***of*** infringing goods ***within six months of the date on which the judicial decision becomes final and binding;***

Or. pl

Justification

Business activities need to run smoothly: decisions cannot be taken solely on the basis of unlawful accusations that have not been upheld by a court.

Amendment 241
Dario Tamburrano, Marco Zullo

Proposal for a directive

Article 11 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the destruction of all or some of the physical or electronic media in which the trade secret is stored or, where appropriate, the delivery up to the trade secret holder of those media;

Or. it

Justification

This point has been moved (from Article 11(2)(e)) because it does not come under the provisions relating to goods. The wording has also been changed in order to make it clear that the destruction relates to the storage media containing trade secrets.

Amendment 242

Adam Gierek

Proposal for a directive

Article 11 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the adoption of the appropriate corrective measures with regard to the infringing goods.

(c) injunctions concerning compensation for market losses.

Or. pl

Justification

The courts should decide on corrective measures (see point (b) as amended).

Amendment 243

Aldo Patriciello

Proposal for a directive

Article 11 – paragraph 2 – point a

Text proposed by the Commission

Amendment

a) a declaration of infringement; ***deleted***

Or. fr

Justification

A declaration of infringement cannot be deemed to be an injunction or corrective measure.

Amendment 244

Philippe De Backer

Proposal for a directive

Article 11 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) a declaration of infringement; ***deleted***

Or. en

Justification

a declaration in itself does not constitute a sufficient corrective measure

Amendment 245

Ashley Fox

Proposal for a directive

Article 11 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) a declaration of infringement; ***deleted***

Or. en

Amendment 246

Dario Tamburrano, Marco Zullo

Proposal for a directive
Article 11 – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

(d) ***withdrawal*** of the infringing goods from the market ***and their distribution to charitable organisations under conditions to be laid down by the judicial authorities in order to ensure that the goods in question do not re-enter the market and*** that such action does not undermine the protection of the trade secret in question;

Or. it

Justification

Withdrawn goods should, as a matter of priority, be distributed to charitable organisations rather than destroying them and hence wasting the resources from which they have been made.

Amendment 247
Dario Tamburrano, Marco Zullo

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

Text proposed by the Commission

Amendment

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

Or. it

Justification

Destruction of goods, and hence wasting the resources from which they have been made, should be considered only when there is no other option.

Amendment 248
Aldo Patriciello

Proposal for a directive
Article 11 – paragraph 2 – point e

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

A declaration of infringement cannot be deemed to be an injunction or corrective measure.

Amendment 249
Ashley Fox

Proposal for a directive
Article 11 – paragraph 2 – point e

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 250
Dario Tamburrano, Marco Zullo

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

Text proposed by the Commission

Amendment

Member States shall ensure that, when ordering the withdrawal of the infringing goods from the market, the judicial authorities may order, at the request of the trade secret holder, that the goods be delivered up to holder or to charitable organisations under conditions to be determined by the judicial authorities aimed at ensuring that the goods in question do not re-enter the market.

deleted

Or. it

Justification

Inserted (as Article 11(2)(d)) in Amendment 8.

Amendment 251

Dario Tamburrano, Marco Zullo

Proposal for a directive

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

Text proposed by the Commission

Amendment

When considering a request for corrective measures, the seriousness of the infringement, the remedies to be imposed, and the interests of third parties shall be brought into an appropriate relationship as determined by the principle of proportionality.

Or. it

Justification

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

Amendment 252
Aldo Patriciello

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

Text proposed by the Commission

Member States shall ensure that, in considering a request for the adoption of the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities take into account the value of the trade secret, the measures taken to protect the trade secret, the conduct of the infringer in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, ***including freedom of expression and information.***

Amendment

Member States shall ensure that, in considering a request for the adoption of the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities take into account the value of the trade secret, the measures taken to protect the trade secret ***and other characteristics of the trade secret, of*** the conduct of the infringer in acquiring, disclosing or using of the trade secret, ***of*** the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and ***of*** the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights.

Or. fr

Justification

The reference to ‘freedom of expression and information’ is superfluous as the directive cannot affect the protection of fundamental rights.

Amendment 253
Ashley Fox

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

Text proposed by the Commission

Member States shall ensure that, in considering a request for the adoption of

Amendment

Member States shall ensure that, in considering a request for the adoption of

the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities take into account the value of the trade secret, the measures taken to protect the trade secret, the conduct of the infringer in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, ***including freedom of expression and information.***

the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities ***shall be required to*** take into account the ***specific circumstances of the case. This assessment shall include, where appropriate, the*** value of the trade secret, the measures taken to protect the trade secret, the conduct of the infringer in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights.

Or. en

Amendment 254

Martina Werner

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that, in considering a request for the adoption of the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities take into account the value of the trade secret, the measures taken to protect the trade secret, the conduct of the infringer in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including

Amendment

Member States shall ensure that, in considering a request for the adoption of the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities take into account the value of the trade secret, the measures taken to protect the trade secret, the ***intentionality of the infringer in acquiring, disclosing or using of the trade secret, the*** conduct of the infringer in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third

freedom of expression and information.

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

Or. en

Amendment 255

Philippe De Backer, Kaja Kallas

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that, in considering a request for the adoption of the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities take into account the value of the trade secret, the measures taken to protect the trade secret, the conduct of the infringer in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including freedom of expression and information.

Amendment

Member States shall ensure that, in considering a request for the adoption of the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities take into account ***all relevant aspects of the case, such as*** the value of the trade secret, the measures taken to protect the trade secret, the conduct of the infringer in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including freedom of expression and information.

Or. en

Amendment 256

Adam Gierek

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. pl

Justification

Point (a) was deleted in Amendment 27.

Amendment 257

Kaja Kallas

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 258
Aldo Patriciello

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

Minor structural amendment in line with Article 12(1).

Amendment 259
Adam Gierek

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. pl

Justification

Point (a) was deleted in Amendment 27.

Amendment 260

Aldo Patriciello, Françoise Grossetête

Proposal for a directive

Article 12 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States shall provide that, at the request of the ***person liable to be subject to the measures provided for in Article 11***, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Amendment

Member States shall provide that, at the request of the ***trade secret holder***, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Or. en

Justification

The proposed pecuniary compensation is made conditional upon the request of the trade secret holder as he should decide whether such request is proportionate to the damages suffered.

Amendment 261

Aldo Patriciello

Proposal for a directive

Article 12 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Justification

Ensures the protection of those acting innocently.

Amendment 262

Philippe De Backer, Cora van Nieuwenhuizen

Proposal for a directive

Article 12 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 263

Ashley Fox

Proposal for a directive

Article 12 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 264

Aldo Patriciello

Proposal for a directive

Article 12 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

b) execution of the measures in question would cause that person disproportionate harm;

b)
does not affect English version; linguistic amendment to French text;

Or. fr

Justification

Linguistic amendment to French text.

Amendment 265

Adam Gierek

Proposal for a directive

Article 12 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

c) pecuniary compensation to the injured party appears reasonably satisfactory.

c) pecuniary compensation to the injured party appears reasonably satisfactory.
When pecuniary compensation is ordered instead of the order referred to in Article 11(1), such pecuniary compensation shall not exceed the amount of any royalties or fees which would have been calculated on the basis of established criteria, had the accused requested authorisation to use the trade secret in question for the period preceding the judicial decision on the infringement of that secret.

Or. pl

Justification

Compensation should be proportional to the damage the trade secret holder suffered on the market.

Amendment 266
Aldo Patriciello

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

Text proposed by the Commission

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

Amendment

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

Or. fr

Justification

Ensures the protection of those acting innocently.

Amendment 267
Miriam Dalli

Proposal for a directive
Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In accepting a request for the adoption of the injunctions and corrective measures where the competent judicial authorities are satisfied that a trade secret exists, that the applicant is the legitimate trade secret holder and that the trade secret has been acquired unlawfully, that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent, the measures referred to in Article 11 of this Directive shall

apply and no other equivalent measures foreseen in other Directives shall come into force.

Or. en

Justification

Article 11 on the Injunction and corrective measures shall apply to cases involving a trade secret. The aim of the amendment is to clarify that these provisions are exclusively stand-alone and separate from the measures contemplated in the Enforcement of Intellectual Property Rights Directive 2004/48/EC, to avoid confusion and misinterpretation, and to provide the necessary safeguards so that no Member State or Court would apply the measures of the Enforcement of IPRs Directive to a situation involving a trade secret once this directive is implemented.

Amendment 268

Aldo Patriciello

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

Or. fr

Justification

The first part of the amendment, apart from the addition of the words ‘as a result of the offence’ is a linguistic change to the French version, not affecting the English text. The second part limits the secondary liability of workers where a trade secret is obtained, used or divulged illegally but without intent.

Amendment 269

Ashley Fox

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

Or. en

Amendment 270

Olle Ludvigsson

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the

Amendment

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the

infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages commensurate to the actual prejudice suffered.

infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages commensurate to the actual prejudice suffered.

In accordance with their national law and practice, Member States may restrict the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer. This option also applies when unlawful acquisition, use and disclosure of trade secrets occurs after the employment of an employee has terminated.

Or. en

Amendment 271
Philippe De Backer

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

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

Amendment

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

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

Or. en

Amendment 272
Martina Werner

Proposal for a directive
Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In accordance with their national law and practice, Member States shall restrict the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer.

Or. en

Amendment 273
Michèle Rivasi
on behalf of the Verts/ALE Group

Proposal for a directive
Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In accordance with their national law and practice, Member States may restrict the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer. This option also applies when unlawful acquisition, use and disclosure of trade secrets occurs after the employment of an employee has terminated.

Or. en

Amendment 274
Kaja Kallas

Proposal for a directive

Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 275

Philippe De Backer, Kaja Kallas

Proposal for a directive

Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

'Appropriate' is replaced by 'relevant' to ensure consistency throughout the text.

Amendment 276

Kaja Kallas

Proposal for a directive

Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

***Exchange of information and
correspondents***

***For the purpose of promoting
cooperation, including the exchange of
information, among Member States and
between Member States and the
Commission, each Member State shall
designate one or more national
correspondents for any question relating
to the implementation of the measures
provided for by this Directive. It shall
communicate the details of the national
correspondent(s) to the other Member
States and the Commission.***

Or. en

Justification

In the context of implementation of the directive, exchanges of information between Member states and the Commission are expected. This provision therefore seems to increase administrative burden on national authorities without clear added value

Amendment 277

Kaja Kallas

Proposal for a directive

Article 17 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 278
Kaja Kallas

Proposal for a directive
Article 17 – paragraph 2

Text proposed by the Commission

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

Amendment

2. By XX XX 20XX [four years after the end of the transposition period], the Commission shall draw up an intermediate report on the application of this Directive and submit it to the European Parliament and the Council. This report shall take due account of the report ***on the litigation trends and shall evaluate the impact of this Directive in particular on the levels of open innovation, collaborative research and labour mobility***.

Or. en

Justification

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

Amendment 279

Kaja Kallas

Proposal for a directive Article 17 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 280

Martina Werner, Sergio Gaetano Cofferati

Proposal for a directive Article 17 – paragraph 2

Text proposed by the Commission

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

Amendment

2. By XX XX 20XX [four years after the end of the transposition period], the Commission shall draw up an intermediate report on the application of this Directive, ***including on its possible deleterious effects on fundamental rights and on***

account of the report prepared by the European Observatory on Infringements of Intellectual Property Rights.

workers' mobility as well as possible further improvements on innovation cooperation with a special attention to the effects on small and medium-sized enterprises, and submit it to the European Parliament and the Council. This report shall take due account of the report prepared by the European Observatory on Infringements of Intellectual Property Rights.

Or. en