

EU trade secrets directive threat to free speech, health, environment and worker mobility

Multi-sectoral civil society coalition calls for greater protections for consumers, journalists, whistleblowers, researchers and workers

We strongly oppose the hasty push by the European Commission and Council for a new European Union (EU) directive on trade secrets because it contains:

- An unreasonably broad definition of “trade secrets” that enables almost anything within a company to be deemed as such;
- Far-reaching legal remedies for companies whose “trade secrets” have been “unlawfully acquired, used or disclosed”, including provisional and precautionary measures, damages and secrecy rights throughout the judicial process; and
- Inadequate safeguards that will not ensure that EU consumers, journalists, whistleblowers, researchers and workers have reliable access to important data that is in the public interest.

The proposal must be amended to ensure that only information acquired, disclosed or used by third parties with intention of commercial gain is protected under the directive.

Specifically, we share great concern that under the draft directive:

- The right to freedom of expression and information could be seriously harmed because the proposed directive does not guarantee the protection of journalists and whistleblowers. Under the proposed directive, journalists and whistleblowers must show 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”. Unfortunately, determining whether disclosure was necessary can often only be evaluated afterwards. In addition, the limitation of the right to disclose and use trade secrets to reveal “wrongdoing”, “misconduct” or to protect a “legitimate interest” would allow for sanctions to be applied even when the information ought to be in the public domain, such as planned redundancies and detrimental effects on health and the environment. The proposed directive should be amended to exempt information acquired, used or disclosed in the public interest.
- The mobility of EU workers could be undermined. The proposed directive poses a danger of lock-in effects for workers. It could create situations where an employee will avoid jobs in the same field as his/her former employer, rather than risking not being able to use his/her own skills and competences, and being liable for damages. This inhibits career development, as well as professional and geographical mobility in the labour market.

- Companies in the health, environment and food safety fields might use the directive to refuse compliance with transparency policies, even when the public interest is at stake. The proposed directive should be amended to ensure that (1) it does not cover information that must, by law (including international law), be disclosed by public authorities under public access to information legislation and (2) it excludes regulatory data of public interest that is needed for public scrutiny of regulatory authorities' activities.

Health: *Pharmaceutical companies argue that all aspects of clinical development should be considered a trade secret; however, access to biomedical research data by regulatory authorities, researchers, doctors and patients—particularly data on drug efficacy and adverse drug reactions—is critical to protecting patient safety and conducting further research and independent analyses. This information also prevents scarce public resources from being spent on therapies that are no better than existing treatments, do not work, or do more harm than good. Moreover, disclosure of pharmaceutical research is needed to avoid unethical repetition of clinical trials on people. The proposed directive should not obstruct recent EU developments to increase sharing and transparency of this data.*

Environment: *The directive must be amended to comply with the EU's international obligations under the United Nations Aarhus Convention, which prevents public authorities from protecting the secrecy of information on emissions into the environment and requires active dissemination of information enabling consumers to make informed environmental choices. Therefore, the definition of "trade secret" should be amended to remove information on emissions from the scope of the proposed directive and companies should be prevented from using the directive to refuse disclosure of information on hazardous products, such as chemicals in plastics, clothing, cleaning products, and other activities that can cause severe damage to the environment and human health, including the dumping of chemicals and fracking fluids.*

Food safety: *Under EU law, all food products, genetically modified organisms and pesticides are assessed by the European Food Safety Authority (EFSA). EFSA assesses the risks associated with these products based on studies performed by manufacturers themselves. Scientific scrutiny of the EFSA's assessments is only possible with complete access to these studies; therefore, this data must be removed from the scope of the directive.*

Despite the Commission's desire for a "magic bullet" that will keep Europe in the innovation game, without amendment, the proposed directive may make it more difficult for the EU to engage in open and collaborative forms of research. In fact, there is a risk that the measures and remedies provided in this directive will undermine legitimate competition and even facilitate anti-competitive behaviour. Unsurprisingly, the text is strongly supported by multinational companies.

Industry coalitions in the EU and the United States (US) are lobbying, through a unified Trade Secrets Coalition, for the adoption of trade secret protection. In the US, two new bills are pending before Congress. If passed, these texts would allow trade secret protection to be included in the Transatlantic Trade and Investment Partnership (TTIP)—something that will be incredibly difficult to repeal in the future through democratic processes. Given that TTIP is expected to set a new global standard, its potential inclusion of trade secret protection could have devastating consequences.

We urge the Council and the European Parliament to amend the directive by limiting the definition of what constitutes a trade secret and strengthening safeguards and exceptions to ensure that data in the public interest cannot be protected as trade secrets. The right to freely use and disseminate information should be the rule, and trade secret protection the exception.

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