

Trade Secrets Directive Clears European Parliament Despite Concerns

14/04/2016 by [Dugie Standeford](#) for Intellectual Property Watch

Rejecting calls for a vote to be delayed until the European Commission proposes tougher whistle-blower protections, the European Parliament on 14 April approved by 503-131 new rules giving companies redress for theft or misuse of trade secrets. Debate on the trade secrets directive showed sharp divisions among lawmakers, heightened by the recent “Panama Papers” and other leaks, over whether the legislation will help businesses safeguard their innovative ideas or lead to increased corporate secrecy.



European Parliament Once published in the Official Journal of the EU, member states will have up to two years to incorporate the new provisions into national law, the Council said.

The idea of the directive is to harmonise trade secrets protection, MEP Constance le Grip, of the European People’s Party and France, said during the 13 April debate. But ensuring protection of trade secrets in no way jeopardises freedom of speech, access to information or the press, nor is it intended to run counter to workers’ rights, she said. The compromise with the EU Council represents a significant improvement on the original EC proposal, and is a balanced text which takes into account all parliamentary concerns about protecting whistleblowers and other rights, said le Grip, author of Parliament’s resolution on the EC proposal.

The directive, informally agreed with ministers before the vote, creates an EU-wide definition of “trade secret,” defining it as information which is secret, has commercial value because it is secret, and has been subject to reasonable steps to keep it secret, the [European Parliament said](#).

The measure requires member states to ensure that companies whose trade secrets are misused can defend their rights in court and seek compensation. It also sets rules to protect confidential information during legal proceedings.

The directive “is not about promoting secrecy in business, it’s about trust,” said European Neighbourhood Policy Commissioner Johannes Hahn at the debate. The legislation will ensure that the risk of sharing information will diminish, he said.

Several MEPs, however, said that the directive will allow companies to keep information confidential, to the detriment of whistleblowers, journalists and others, and to sue those seeking to uncover the information in the public interest.

The Panama Papers, Luxleaks and other leaks had one thing in common, said MEP Julia Reda, of the Greens/European Free Alliance and Germany: They all involved whistleblowers who exposed information classified as corporate secrets. She urged lawmakers to postpone their vote on the directive until the EC published a whistleblower protection proposal, but her motion was defeated.

The Trade Secrets & Innovation Coalition welcomed the vote, saying the directive will “help to discourage misappropriation attempts, especially originating in countries outside the EU, as well as efforts to place goods produced as a result of trade secret theft on the market.” The coalition also applauded the safeguards for journalists, whistleblowers, employees and transparency of regulatory data. TSIC urged governments to consider further harmonisation of national civil procedures and stronger confidentiality rules to protect know-how in legal proceedings.

Coalition members are Air Liquide, Alstom, DuPont de Nemours, General Electric, Intel and Michelin. TSIC said it works with the European Chemical Industry Council, Europe’s 500, Business Europe, the European Semiconductor Industry Association and the International Fragrance Association.

The directive may be more of an advance in protection on the Continent than in the UK, said Laurie Heizler, who heads Barlow Robbins’ intellectual property, technology & media team. Britain has an effective, flexible confidentiality law, he said.

Companies which share trade secrets may want to put non-disclosure agreements in place, but even if they don’t, the information is protected, he noted.

Civil Society Unhappy

Public interest groups, however, worried that the directive will lead to more corporate secrecy and higher risks for employees and reporters.

Health Action International said it’s “deeply disappointed” by the vote. Under the directive, researchers, journalists and whistleblowers who expose illicit practices by the pharmaceutical industry, or reveal important medicine safety and efficacy information, “will not be adequately protected under law,” it said. The measure’s broad definition of what constitutes a trade secret, and its lack of clarity on exceptions to unlawful use or disclosure, “create legal uncertainty,” it said.

“The burden of proof will be placed on individual” citizens, who could face costly trials against big corporations and hefty economic penalties if they lose, said Health Action International. The push for secrecy of business information “comes at a time when the competition authorities and the current Netherlands EU Presidency [are] questioning whether excessive intellectual property protection on medicines is the appropriate driver for innovation in the pharmaceutical sector,” it added.

UK whistleblowing charity Public Concern at Work also panned lawmakers for pushing the directive through “without specific and easily enforceable whistleblowing rights.” There is a “danger that a chill wind will blow in many workplaces making silence

the preferred option of workers who have witnessed wrongdoing, risk or malpractice at work,” PCAW Chief Executive Cathy James told Intellectual Property Watch. The only “silver lining,” she said, is “that we may be a little step closer to a full EU directive” on the whistleblower protection needed to counterbalance the corporate rights granted.

European journalist and media associations “are concerned that this Directive could put journalists at risk therefore limiting their ability to investigate and report about businesses” at a time when the Panama Papers have reaffirmed the essential role those entities play in informing citizens about issues of public interest, said the European Federation of Journalists, Reporters Without Borders, the European Magazine Media Association, the European Newspaper Publishers’ Association and the European Broadcasting Union. Free speech and information protections will depend on how national administrations implement the law, leading to legal uncertainty, they said.

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