Trade secrets protection: Council adopts new directive

The Council has adopted a directive setting out rules for the protection of trade secrets and confidential information of EU companies.

The decision follows an agreement reached with the European Parliament on 15 December 2015.

The directive, which lays down common measures against the unlawful acquisition, use and disclosure of trade secrets, aims at ensuring the smooth functioning of the internal market.

It is also intended to have a deterrent effect against the illegal disclosure of trade secrets, without undermining fundamental rights and freedoms or the public interest, such as public safety, consumer protection, public health, environmental protection and mobility of workers.

Protection of media investigations

While the directive provides for measures preventing the disclosure of information to protect the confidentiality of trade secrets, the new measures fully ensure that investigative journalism can be exercised without any new limitations, including with regard to the protection of journalistic sources.

The directive is in compliance with the EU’s Charter of Fundamental Rights, which preserves freedom and pluralism of the media.

Mobility of employees

The directive will not impose any restrictions on workers in their employment contracts, where national law will continue to apply.

Therefore there will be no limitation to employees’ use of the experience and skills honestly acquired in the normal course of their employment.

Furthermore, the autonomy of social partners and their rights to enter into collective agreements will not be affected by the implementation of the new conditions.

Whistle-blowers

Persons acting in good faith that reveal trade secrets for the purpose of protecting the general public interest, commonly known as ‘whistle-blowers’, will enjoy adequate protection. Trade secrets protection will not apply in cases in which the objective was to reveal misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest.

Compensation to trade secret holders

In accordance with the new legal framework, EU member states will have to provide for the measures, procedures and remedies necessary to ensure the availability of civil redress against the illegal acquisition, use and disclosure of trade secrets.

These will have to be fair, effective and dissuasive. They must not be unnecessarily complicated or costly, nor may they entail unreasonable time limits or unwarranted delays. The limitation period for claims will not exceed six years.

Trade secret holders will be entitled to apply for remedies in case of damages following cases of illegal appropriation of documents, objects, materials, substances or electronic files containing a trade secret or from which a trade secret can be deduced.

Where necessary, confidentiality of trade secrets will also be preserved during the course of and after the legal proceedings.
Next steps

After publication of the directive in the Official Journal of the EU and its entry into force, member states will have a maximum of two years to incorporate the new provisions into domestic law.

Background

Companies invest in acquiring, developing and applying know-how and information. This investment in intellectual capital has an impact on their competitiveness and innovative performance in the market and therefore on their benefits and motivation for continuing innovation.

This valuable know-how and business information that is intended to remain confidential is known as a trade secret.

This covers a wide range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers, business plans and market research and strategies.

Trade secrets play an important role in protecting the exchange of knowledge between businesses, in particular SMEs, and research institutions within the internal market in the context of research and development and innovation.

Nowadays there is great diversity of systems and definitions in member states as regards the treatment and the protection of trade secrets. This new instrument will bring legal clarity and a level playing field to all European companies. It will also help increase their interest in the development of research and innovation activities.


- Statement by Latvia