

Fordham - 24th Annual IP Law & Policy Conference

Session 2B: Trade Secrets

Latest developments on trade secrets in the EU

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1. Economic importance of trade secrets

- SMEs
- In general

2. The future directive on trade secrets

- History
- Main features
- Main debates
- Adoption

Status of the directive

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

- Proposal Commission 28 November 2013
- EP & Council reached agreement on 15 December 2015
- Council final paper 4 January 2016
- Probable final adoption by EP: Plenary, April 2016

A rather rapid procedure

Context of the proposal

- “Europe is strong on science and innovation and it has the potential to become a global leader”
- “R&D within the EU is not sufficiently driven by business compared to US and Japan”
- “Desirable to improve the conditions for innovative business activity”
- “IPRs tend to protect the results of creative or inventive efforts, but they have a limited scope of application”
- “Every IPR starts with a secret” sic!

Definition (Art. 2)

TS = information that:

- a) is secret in the sense that it is not as a body in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with kind of information
- b) has commercial value because it is secret
- c) has been subject to reasonable steps, ..., to keep it secret

Lawful acquisition, use and disclosure (Art. 3)

Lawful acquisition

- Independent discovery or creation
- Observation, study, disassembly or test of a product or object...
- Exercise of the right of workers to information and consultation
- Practice conform to honest commercial practice

Unlawful acquisition, use and disclosure (Art. 4)

- Holders of TS can present or obtain redress for unlawful, acquisition use or disclosure of their TS.
- Unauthorised access, appropriation, copy of any documents, objects, materials, substances or electronic files lawfully under the control of the TS holder
- Any other conduct contrary to honest commercial practices

Exceptions (Art. 5)

- Exercise of the right to freedom of expression and information
- For revealing a misconduct, wrongdoing or illegal activity
- Legitimate exercise of representative functions of workers
- Protecting a legitimate interest recognised by EU law or national law

Further provisions (1)

- Art. 6: general obligation
- Art. 7: proportionality and abuse of litigation
- Art. 8: limitation period
- Art. 9: preservation of confidentiality in legal proceedings

Further provisions (2)

- Art. 10: provisional and precautionary measures
- Art. 11: conditions of application of safeguards
- Art. 12: injunctions and corrective measures
- Art. 14: damages



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Thank you