

European CSOs Call for Rejection of EU Trade Secrets Directive

(Open Letter to Legal Affairs Committee, European Parliament)

On 28 January 2016, the European Parliament's Legal Affairs Committee will vote to accept or reject the text of the EU Trade Secrets Directive agreed in trilogues at the end of 2015. We call on its members to reject it.

The text is the result of negotiations between the European Commission, EU Member States and the European Parliament, which spent half of 2015 debating and amending it. The negotiators have made clear that further amendment is not welcome. But this text is also a result of the lobbying of multinational corporations from the US and the EU, whose lobbyists helped a few officials at DG Internal Market draft and push for its publication. Of course, right now the companies appearing publicly to defend the text are only European SMEs and innovative start-ups.

Too much is at stake. The Parliament improved the text, but the starting point was too bad. Journalists, whistle-blowers still face legal ambiguities: Article 4 contains a very restrictive and vague list of the situations in which business information can be disclosed. And the directive concerns many more: employees, consumers, patients, those whose health is affected by living or working in proximity to instances of industrial malpractice... The impact of this text on the legal regime of public interest disclosures (such as crucial information on medicines' safety and efficacy- clinical trials data...) remains unclear too. As secrecy becomes the default status for internal corporate information, the price of these legal ambiguities will be paid by everyone.

More than that, this Directive only sets minimum standards. The scandalous criminal measures foreseen by the French government in January 2015, when it tried to introduce key elements of this Directive into French law, could be re-introduced at Member State level with this text, with opportunities for companies to use the most favorable national regime for legal action in the EU.

This new legislation extensively refers to an intellectual property framework and is not limited to preventing anti-competitive behaviour. Its adoption would therefore broaden the scope to everyone in society who "acquires, uses or publishes" information considered a trade secret. The new legal regime would be closer to the USA's, where new federal legislation is also being passed - no doubt this would be included into the TTIP if signed, making change very difficult.

The directive initially drafted by the European Commission favored companies' economic rights at the expense of citizens' political rights. Unfortunately the compromise text still does the same. If companies are given the means to consider almost any internal

information as their quasi intellectual property, they can prevent their employees, the main target of the text, from using any professionally relevant information learned in their jobs in another company for six years.

With companies protecting their reputation more and more aggressively, whistle-blowers are becoming the last sources of inside information on the brutality of corporate practices. We do not think that this last small light will remain if the media can be sued for the publication of any internal information which could be deemed a trade secret.

Trade secrets must not be protected at such a dramatic price. Please reject this text and ask the European Commission to propose a better one, this time not exclusively relying on industry lobbyists and lawyers for advice.

Respectfully,

Centre national de coopération au développement, CNCD-11.11.11

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