

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.

For additional information or comment, please contact:

HEALTH

Health Action International

Tessel Mellema, Policy Advisor / tessel@haieurope.org / +31 20 683 3684
Ancel.la Santos Quintano, Policy Advisor / ancel.la@haieurope.org / +31 20 683 3684
www.haieurope.org

Medicines in Europe Forum

Pierre Chirac, Coordinator / pierrechirac@aol.com
english.prescrire.org

Commons Network

Sophie Bloemen, Coordinator / info@commonsnetwork.eu
www.commonsnetwork.eu

Public Citizen, US

Burcu Kilic, Legal Counsel, Global Access to Medicines Program / bkilic@citizen.org / +1 202 588 1000
www.citizen.org/access

European Public Health Alliance

Kolia Bénié, EU Affairs and Governance Policy Coordinator / kolia@epha.org / +32 2 233 38 84
www.epha.org

Knowledge Ecology International (KEI) Europe

Thiru Balasubramaniam, Staff Coordinator / thiru@keionline.org
www.keieurope.org

Cochrane Collaboration – Nordic Cochrane Centre

Peter Goetzsche, Director / pcg@cochrane.dk
www.cochrane.org

International Society of Drug Bulletins (ISDB)

press@isdbweb.org
www.isdbweb.org

Association Internationale de la Mutualité (AIM)

Menno Aarnout, Executive Director / menno.aarnout@aim-mutual.org
www.aim-mutual.org

Berne Declaration

Patrick Durisch, Responsable Programme Santé – Health Programme Coordinator / durisch@ladb.ch /
+41 21 620 03 06
www.bernedeclaration.ch

Health Projects for Latvia

Ieva Salmane-Kujikovska, Chair of the Board / veselibasprojekti@gmail.com
www.veselibasprojekti.lv/?lng=en

HEAL (Health & Environment Alliance)

Génon K. Jensen, Executive Director / genon@env-health.org / +32 2 234 36 47
www.env-health.org

FOOD SAFETY

Corporate Europe Observatory (CEO)

Martin Pigeon, Researcher and Campaigner / martin@corporateeurope.org / +32 2 89 30 930
www.corporateeurope.org

GeneWatch UK

Helen Wallace, Director / helen.wallace@genewatch.org / +44 (0)1298 24300
www.genewatch.org

EFFAT (European Federation of Food, Agriculture, Tourism Trade Unions)

Harald Wiedenhofer, General Secretary/ H.wiedenhofer@effat.org/ + 32 2 209 62 63
www.effat.org

ENVIRONMENT

Client Earth

Anaïs Berthier, Senior Lawyer/juriste - Environmental Justice / aberthier@clientearth.org / +32 2 808 3468
www.clientearth.org

Center for International Environmental Law (CIEL)

David Azoulay, Senior Attorney, Health and Environment Program Director / dazoulay@ciel.org
www.ciel.org

Greenpeace (EU unit)

Andrea Carta, Legal Strategist - European Unit / andrea.cart@greenpeace.org / +32 2 274 1920
www.greenpeace.eu

EEB (the European Environmental Bureau)

Jeremy Wates, Secretary General / jeremy.wates@eeb.org / +32 (0) 2289 1091
www.eeb.org

NatureFriends International (NFI)

Seda Orhan Defranceschi, Head of Brussels Office / seda.orhan@nf-int.org
www.nf-int.org

Commons Network

Sophie Bloemen, Coordinator / info@commonsnetwork.eu
www.commonsnetwork.eu

CONSUMERS

Centre national de coopération au développement (CNCD-11.11.11")

Antonio Gambini, recherche et plaidoyer financement du développement / antonio.gambini@cncd.be /
+32 (0) 2 613 30 31
www.cncd.be

TransAtlantic Consumer Dialogue (TACD)

David Hammerstein, Senior Policy Advocate, hammerstein.david3@gmail.com
<http://tacd.org/>

FREEDOM OF SPEECH & WHISTLEBLOWERS

French journalists collective “Informer n'est pas un délit”

informernestpasundelit@gmail.com

<http://informernestpasundelit.tumblr.com/>

La Quadrature du Net

Marie Walrafen / contact@laquadrature.net / +33 (0)972 294 426

www.laquadrature.net

Corporate Europe Observatory (CEO)

Martin Pigeon, Researcher and Campaigner / martin@corporateeurope.org / +32 2 89 30 930

www.corporateeurope.org

Article 19

David Banisar, Senior Legal Counsel / banisar@article19.org / +44 20 7324 2500

www.article19.org

Electronic Frontier Foundation (EFF)

Jeremy Malcolm, Senior Global Policy Analyst / jmalcolm@eff.org

<https://eff.org>

EDRi (European Digital Rights)

walter@vrijschrift.nl

<https://edri.org/>

The Foundation for Information Policy Research

Ross Anderson / Ross.Anderson@cl.cam.ac.uk / +44 1223 334733

<http://www.fipr.org/>

Vrijschrift

walter@vrijschrift.nl

<https://www.vrijschrift.org/serendipity/>

CEE Bankwatch Network

Petr Hlobil, Campaigns Director / peth@bankwatch.org / +420 274 822 150

Transparency International France

Daniel Lebègue, Président / contact@transparency-france.org / +33 1 84 16 95 65

www.transparency-france.org

Fondation Sciences Citoyennes

Bertrand Bocquet, Président / contact@sciencescitoyennes.org / +33 1 43 14 73 65

WORKER MOBILITY

EUROCADRES (Council of European Professional and Managerial Staff)

Martin Jefflén, President / martin.jefflen@eurocadres.eu / +32 473 555 344
www.eurocadres.eu

EPSU (European Federation of Public Service Unions)

Jan Willem Goudriaan, General Secretary / jwgoudriaan@epsu.org / +32 2 250 10 90
www.epsu.org

ETUC (European Trade Union Confederation)

Legal Advisor, Séverine Picard / spicard@etuc.org / +32 2 224 04 09

CFDT CADRES (CFDT for Professional and Managerial Staff)

Jean-Paul BOUCHET, secrétaire Général / jean-paul.bouchet@cadres.cfdt.fr / +33 1 56 41 55 00
www.cadrescfdt.fr/

Akademikerna (The Danish Confederation of Professional Associations)

Käthe Munk Ryom, International chief Advisor / kmr@ac.dk / +45 2249 5866
www.ac.dk

AGENQUADRI (General Association of Managers, Professionals and High-Skilled Workers)

Paolo Terranova, President / p.terranova@cgil.it / +39 06 8476336
www.agenquadri.it

Saco

Åsa Ehinger Berling, International Secretary / +46 70 6213230
www.saco.se/en/

UNI Europa

Christina Colclough, Head of EU Affairs / Christina.colclough@uniglobalunion.org / +32 471936751
www.uni-europa.org

Akava (Confederation of Unions for Professional and Managerial Staff in Finland)

Jaana Meklin, Legal Adviser / jaana.meklin@akava.fi
www.akava.fi

Unionen

Ann-Helène Westrup, International Secretary / ann-helene.westrup@unionen.se / 46 8-504 155 17
www.unionen.se

TCO (Swedish Confederation of Professional Employees)

German Bender, Utredare/Senior Research Officer / +46-8-782 91 85
www.tco.se