Protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

2013/0402(COD) - 14/04/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 503 votes to 131 with 18 abstentions, a legislative resolution on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

The position of the European Parliament adopted in first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Purpose and scope: the Directive lays down rules on the protection against the unlawful acquisition, use and disclosure of trade secrets. Parliament specified, however, that the Directive shall not affect:

- the exercise of the right to freedom of expression and information as set out in the Charter, including respect for the freedom and pluralism of the media;
- the application of Union or national rules requiring trade secret holders to disclose, for reasons of public interest, information, including trade secrets, to the public or to administrative or judicial authorities for the performance of the duties of those authorities;
- the application of Union or national rules requiring or allowing Union institutions or national public authorities to disclose information submitted by businesses which those institutions hold pursuant to the obligations set out in Union or national law;
- the autonomy of social partners and their right to enter into collective agreements, in accordance with Union law and national laws and practices.

Furthermore, nothing in the Directive shall be understood to offer any ground for restricting the mobility of employees. In particular, in relation to the exercise of such mobility, this Directive shall not offer any ground for:

- limiting employees' use of information that does not constitute a trade secret;
- limiting employees' use of experience and skills honestly acquired in the normal course of their employment;
- imposing any additional restrictions on employees in their employment contracts other than restrictions imposed in accordance with Union or national law.

Lawful acquisition, use and disclosure of trade secrets: the amended text states that the acquisition of a trade secret shall be considered lawful when the trade secret is obtained by any of the following means:

- independent discovery or creation;
- observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret;
- exercise of the right of workers or workers' representatives to information and consultation in accordance with Union law and national laws and practices;
- any other practice which, under the circumstances, is in conformity with honest commercial practices.

The acquisition, use or disclosure of a trade secret shall be considered lawful to the extent that such acquisition, use or disclosure is required or allowed by Union or national law.

Unlawful acquisition, use and disclosure of trade secrets: Member States shall ensure that trade secret holders are entitled to apply for the measures, procedures and remedies provided for in the Directive in order to prevent, or obtain redress for, the unlawful acquisition, use or disclosure of their trade secret. However, an application for the measures, and remedies must be dismissed where the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:

- for exercising the right to freedom of expression and information as set out in the Charter , including respect for the freedom and pluralism of the media;
- for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest;
- disclosure by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with Union or national law, provided that such disclosure was necessary for that exercise;
- for the purpose of protecting a legitimate interest recognised by Union or national law.

Proportionality and abuse of process: Member States shall ensure that competent judicial authorities may, upon the request of the respondent, apply appropriate measures as provided for in national law, where an application is manifestly unfounded and the applicant is found to have initiated the legal proceedings abusively or in bad faith. Such measures may, as appropriate, include awarding damages to the respondent.

Limitation period: Member States shall lay down rules on the limitation periods applicable to substantive claims and actions for the application of the measures, procedures and remedies. The rules shall determine when the limitation period begins to run, the duration of the limitation period and the circumstances under which the limitation period is interrupted or suspended. The duration of the limitation period shall not exceed six years.

Preservation of confidentiality of trade secrets in the course of legal proceedings: lawyers or other representatives, participating in legal proceedings are not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential. In that regard, Member States may also allow competent judicial authorities to act on their own initiative.

Injunctions and corrective measures: amongst the measures which may be ordered against the infringer Members added the destruction of all or part of any document, object, material, substance or electronic file containing or embodying the trade secret or, where appropriate, the delivery up to the applicant of all or part of those documents, objects, materials, substances or electronic files.

Damages and interest: Member States may limit the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer where they act without intent.

Publication of judicial decisions: in deciding whether to order a measures for the dissemination of the information concerning a judicial decision, the competent judicial authorities shall also take into account whether the information on the infringer would be such as to allow a natural person to be identified and, if so, whether publication of that information would be justified, in particular in the light of the possible harm that such measure may cause to the privacy and reputation of the infringer.