



EUROPEAN APPEAL: The European trade secrets directive is a threat to our liberties

Brussels, 7 April 2015

In November 2013 the European Commission published its proposal for a trade secrets directive. This draft, which the European Parliament will examine in May, is a threat to fundamental rights that puts the profits of multinational companies before social, environmental and democratic interests. The goal of the directive is supposedly to produce a common definition of trade secrets to ensure that the competitiveness of European businesses and research bodies, based on undisclosed know-how and business information, is adequately protected.

There are, however, several issues with the legislation that are worrying. Firstly, the definition of trade secrets is wide and vague and applies to all confidential information. It is important that the definition of a trade secret is as precise and clear as possible. Secondly, according to the proposed legislation an infringement of trade secrets would arise as soon as information is disclosed, with no regard to the way it is being used or for what purpose.

Even though the stakes of this directive for individual and collective employee rights are enormous, it doesn't fall within the scope of the European social dialogue. As a result, neither trade unions nor NGOs have been formally consulted on the proposal.

However, Eurocadres as well as many national trade unions and NGOs have expressed multiple reservations, in particular regarding the free movement of workers, the weakening of the role of employees' representatives and the jeopardising of whistleblowers and the freedom of the press.

In everyday life, the directive could restrict employees' ability to freely change employment, for example by introducing the risk of creating a process in a new job, which is too similar to one used in a previous role - employees may feel unable to use their know-how with a new employer. The use of company information by workers' representatives exercising their trade union rights is also not excluded from the scope of criminal liability.

Many representatives and trade unionists have had the courage to communicate information about companies' strategic choices, transfer or takeover projects, severance schemes, relocation, transfer of activities to subsidiaries and sub-contractors, the use of government support and so on to employees or even to the press in order to counter shareholders' unfair business practices. But with this proposed directive whistleblowers, journalists, publishers and activists working for the public's right to know will risk prosecution.

The right to freedom of expression and information could be seriously harmed. The proposal contains no general exception for investigative journalists nor for NGO researchers and whistleblowers, although their work is essential for any modern democratic society. There is also no exception for information which impacts on fundamental rights, in particular regarding public health and the environment.

The so-called “commercial” information that would become protected as a trade secret, legally enforced through criminal sanctions, is often highly relevant to the general interest of the public. This is the case, for example, for the complex tax structures negotiated between many major companies and the tax authorities of Luxembourg (the Luxleaks scandal) and for medical data related to clinical trials organised by pharmaceutical companies - data which might actually save lives – as it is for a wide range of data related to environmental protection and consumer health in the chemical industry.

Finally, the European directive stipulates that in the event of civil or criminal proceedings, access to files or hearings might be restricted, before, during and after the legal action in order to protect trade secrets. This is a serious threat to equality before the law - as the files are not accessible to all parties anymore - and to the freedom of information. Of course, the right to open justice is guaranteed by the constitutions of many EU member states.

The French government, in its attempt to anticipate the adoption of this directive, faced an important protest movement that forced it to step back and acknowledge that trade secrets are a threat to freedom of speech both inside and outside the company. What is true in France can also be true on the European level. We call on the members of the European Parliament and the governments of Europe to look at this proposal again.

It might be necessary and legitimate to protect economic operators from unfair competition, but it is clearly neither necessary nor legitimate to withdraw such a large body of information from any form of public debate and transparency. We do not believe in criminalising the work of whistleblowers, journalists and Union activists. The threat to transparency and public oversight in this trade secrets directive proposal has to be stopped.

Europe/International :

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Sarah Harrisson, director of **Courage Fondation**

Julian Assange, editor-in-chief of **Wikileaks**

Dominique Guibert, president of the **Association Européenne des Droits de l’Homme (AEDH)**

Gualtiero Michellini, president of **Magistrats Européen pour la Démocratie et les Libertés (MEDEL)**

Jerome Chaplier, Coordinator of **European Coalition for Corporate Justice (ECCJ)**

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Collectif des « Economistes Atterrés »
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