

BUSINESSEUROPE



THE DIRECTOR GENERAL

Mr Michel Barnier
Commissioner for Internal Market and Services
European Commission
BE-1049 Brussels

20 February 2012

Dear Commissioner Barnier,

BUSINESSEUROPE wishes to draw your attention to the need of action from the European Commission on an issue of critical importance for European business that is the increasing phenomenon of harmful violations of European companies' trade secrets.

Trade secrets are a key form of intellectual property protection even though they are not protected in the same way as other forms of intellectual property, such as patents, copyrights, or trademarks. They are enshrined in Article 39 of the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). We welcome the fact that the Commission has recently recognised the importance of trade secrets in its communication on a Single Market for Intellectual Property Rights (IPR) Strategy of 24 May 2011. Trade secrets are vital to the competitiveness of European industry and its ability of doing business both within Europe and in third country markets around the world.

As a result of the intellectual property and procurement policies of certain countries, trade secrets and the value they provide for European economy are more and more under threat. Cyber-based economic espionage in particular constitutes a drain on European and transatlantic wealth and places targeted companies at a competitive disadvantage, as the recent high-profile examples of *Operations Shady RAT* and *Aurora* highlight.

This is why BUSINESSEUROPE urges policymakers at both EU and Member States' level to adopt measures strengthening trade secrets protection and improving prosecution of both trade secret violations and the intellectual property rights infringements that underlie them. We would like to highlight the importance of the following actions:

- At the international level, effective coordination is key, including identification of EU trading partners that fail to provide adequate protection against cyber theft and other forms of trade secret misappropriation. Appropriate remedies against products incorporating misappropriated trade secrets which are being imported into the EU are also needed.



- EU leadership is required to encourage adoption and enforcement of national trade secret legislation by third countries who are now failing at a level consistent with the requirements and demands of global IPR regimes (Article 39 and Section III of TRIPS in particular). The focus should be primarily on Europe's main trading partners, including key developed and emerging economy markets such as China, Russia and others. In this context, BUSINESSEUROPE has already voiced the importance of the issue for European business in its October 2011 report "Rising to the China challenge".
- Global trade and investment negotiations should also be used to further strengthen the existing legal frameworks and place additional pressure on countries whose practices diverge.
- Harmonisation at European level is still lacking and action is needed. The publication of the Commission study on the divergent legal situation in Member States regarding trade secrets by DG Internal Market was a positive first step.
- Intra-European regulatory and enforcement action should be pursued against cyber espionage and other forms of trade secret misappropriation and theft. Where Member State competences are involved, the Commission can play a *significant role in coordinating action, providing information, educating about the need of preventive protection policies and encouraging enforcement wherever appropriate, feasible and needed.*

In view of the above, we urge you to take action to boost trade secret protection in the EU and globally as a priority in order to tackle the growing threat of cyber espionage and trade secret theft.

We look forward to continue discussing with you and your services the best ways to achieve the goals outlined above.

A similar letter will also be sent to Commissioner De Gucht and the Chairman of the International Trade Committee at the European Parliament Mr Vital Moreira.

Yours sincerely,

Philippe de Buck