

# B LIST



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(GROW)

21

**From:** (MARKT)  
**Sent:** 22 March 2012 14:59  
**To:** Gaudino, Francesca (Francesca.Gaudino@bakermckenzie.com)  
**Subject:** CEFIC  
**Attachments:** Cefic data protection 9th FEB 2012.pdf

Dear Francesca

In the meantime I had forgotten to forward you the contact detail of from CEFIC (see below).

CEFIC is also a member of the Coalition but it also is individually very active in advocating for the improvement of the legal framework of trade secrets in the EU.

Regards

**EUROPEAN COMMISSION**

Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2 B-1049 Brussels  
Tel. (+32) 22  
mailto: [dec.europa.eu](mailto:dec.europa.eu)

**From:** [mailto: @cefic.be]  
**Sent:** Thursday, March 01, 2012 4:40 PM  
**To:** (MARKT)  
**Subject:** The TS survey

1 March 2012

Dear

As discussed I would be very pleased to have some contacts with the Consultant. You will find herewith Cefic recent paper which you may pass to them.

Regards,

Senior Legal Counsellor & Governance Officer  
Cefic (AISBL) Avenue E van Nieuwenhuyse, 4, 1160 Brussels - Belgium

Tel : ++ 32 2 676 . . . fax: ++ 32 2 676  
e-mail: [@cefic.be](mailto:@cefic.be) Cefic web site: [www.cefic.org](http://www.cefic.org)

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## HOW TO PROTECT COMPANY DATA?

9<sup>th</sup> February 2012

Legislation is increasingly requiring companies to disclose confidential proprietary information, which is part of their valuable assets, at the risk of jeopardizing their competitiveness.

Pressure is made for disclosing information either via registration processes or for other purposes. Such information often referred to as Trade Secrets, Know How or Confidential Business Information (CBI) are essential for chemical companies, often the result of the innovation process and are part of their strategic assets. Illustration of these may be found in the attached list.

Should there be "unlimited" dissemination it would be devastating for the competitiveness of companies based in Europe, but also made in contradiction with the Lisbon Treaty and the newly integrated European Charter on Fundamental Rights which include the right of protection of property and intellectual property (IP) in its Article 17. It would also be contrary to the EU Commission IP Strategy Communication adopted in May 2011, and its claimed objectives to provide protection and enforcement mechanisms for intellectual property rights as reiterated in its Communication on Integrated Industrial Policy (see point 4.1).

Any adequate level of legal protection needs to balance competing interests, which are:

- ✎ On the one hand, the legitimate right of companies to have their proprietary data protected; and
- ✎ On the other hand, public policy objectives as for example encouraging disclosure and granting public access to environmental information or avoiding repetition of unnecessary testing on vertebrate animals.

Unfortunately, the European Union lacks a general framework on this legal protection and provides it at sectoral level only. In addition, when provided it at sectoral level the balance between the competing interests is often uneven and placed at different levels with a tendency for erosion of the right of companies.

As demonstrated hereunder, examples of difficulties encountered by companies may be found in horizontal legislation as well as sectoral ones, leading sometimes to the intervention of European Courts. The next section outlines the improvements needed.

## 1. General erosion of data protection in face of an increasing demands for "total transparency"

- **Regulation (No) 1049/2001 regarding public access to European Parliament, Council and Commission documents**

The Transparency Regulation lays down the principles, conditions and limits governing the right of access to documents of EU institutions, bodies and agencies and documents received by these from companies, for example. Its on-going review highlights the need for striking the right balance between transparency and confidentiality. While public access to documents and transparency in general is beneficial, the type and threshold number of publicly accessible documents should be carefully determined in order to protect legitimate economic interests of companies, including as the Regulation applies also to the EU Agencies.

As a result of the recent plenary vote, the European Parliament opted in favour of greater transparency by agreeing on a broader definition of "document". It would mean that any data concerning a matter falling under the responsibility of an EU institution or body would be considered a document and it would not make a difference whether the documents were drawn up or received by them. As regards documents from third parties, the disclosure would still be left to the discretion of Institutions which will contact the owner of the document prior to responding unless it is clear that the document shall or shall not be disclosed.

What is new is that the possibility to invoke exceptions to the right of access could be set aside where there is an overriding public interest in disclosure, such as "the right to live in a healthy environment". Should the text remain unchanged, a wide range of proprietary data being in the possession of EU institutions, bodies, offices and agencies would be left without protection against disclosure i. e. to competitors. Finally, no protection would be foreseen if the document was provided for the purpose of influencing policy-making

- **The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**

Drawn up to facilitate access to environmental information held by public authorities, the Aarhus Convention is also a pillar of EU law concerning transparency and confidentiality. Although the term of "information relating to the environment" is defined in a broad way, it should be noted that the Convention does not give unlimited right of access. Since its entry into force, the Convention is constantly subject to intentions aiming at the enlargement of its scope. Groups of interests have recently tried to extend the application of the Convention to environmental information held by the private sector, which is in contradiction to the spirit of the Convention. While the Convention aims to give citizens access to information, it states that the addressees of requests for information are public authorities only and that they may refuse such a request if they do not hold the environmental information requested (see Art. 4 (3) lit (a)).

## 2. Specific examples in the Chemical legislation

- **Chemicals (REACH)**

Due to its comprehensive scope covering potentially all chemical substances and among others, all the European producers, the REACH regulation (1907/2006/EC) has proven to potentially contain a serious threat to such balance between right to know and protection of CBI. The set of information to be provided by chemical companies to the authorities pursuant to the REACH regulation is extensive and may include explicitly or indirectly various pieces of Confidential Business Information.

ECHA, the EU Agency in charge of the implementation of that piece of legislation, must protect CBI by virtue of the articles 118 and 119 of the REACH Regulation. The interpretation and the arrangements that have to be put in place are part of this protection. The provisions of the REACH Regulation, the implementing measures and the interpretation of the intentions of the legislator by the authorities



do not provide a clear understanding. Therefore, there is a lack of acceptance that certain business critical information must be regarded as confidential and should not be disclosed without prior authorisation from the owner.

Despite the importance of such rights and the level of details that has been adopted by the legislator in that field, a trend towards an extensive interpretation to the detriment of the legitimate right for the protection of CBI has been observed in case of absence of clear and explicit mandate by the legislator regarding the disclosure of certain categories of information. Was the intention of the REACH legislator to create explicitly such prevalence, such principle would have been stated in a much more unambiguous and precise way in the REACH text.

It is clear that the rationale of the process of disclosure of information under REACH is to provide information on substances properties and safe use of the chemical substances to the general public and not to become a detailed register of commercial information. Disclosure of information provided by European chemical companies under REACH should never make possible to map their product portfolio or certain secret information.

This would constitute a potential damage to the competitiveness of these companies, which can easily become targets of economic aggressions, as demonstrated by the significant predominance of requests coming from competing companies in terms of request for access to document submitted for the time being to ECHA.

- **Biocides**

The new Biocides Regulation adopted a solution parallel to the REACH Regulation. Animal tests are to be shared (article 61). Applicants and data owner have to make every effort to agree on data sharing and compensations, otherwise ECHA shall give permission to refer to these data (article 62).

By exception to Regulation 1049/2011, ECHA, who is also in charge, shall refuse access to information when disclosure would undermine the protection of commercial interests (article 65). ECHA will make data relating to approved substances “publicly and easily available” unless the data supplier justifies that their publication would potentially harm its commercial interests.

The applications of the above-mentioned exception are now the central point of discussion. Each piece of information should be considered regarding both public and private interests.

- **Seveso**

The Commission's proposal from December 2010 for an amended Directive on control of major-accident hazards involving dangerous substances contains far-reaching provisions which aim to grant a wide public access to safety information, to increase participation in decision-making and access to justice.

The Commission explains these proposals with the “need to bring the Directive more in line with the Aarhus Convention”. The problem is that the proposals from the Commission go much further than the Aarhus Convention and implementing European legislations. They suggest for example that information should be ‘permanently available’ where the Aarhus legislation only requests an active dissemination of information or a yearly update of information which is a big administrative exercise for the companies / operators.

The proposals further make either no or only an incomplete reference to the possibilities to refuse a request for access to information, where these grounds for refusal are clearly mentioned in both the

Aarhus Convention and the implementing legislations. While Cefic generally supports transparency, openness and involvement of the public in decision-making processes, there are the rights of data protection and confidentiality of business information which have to be safeguarded as well and a clear reference to them is necessary.

- **Industrial Emissions**

Although the Directive on Industrial Emissions (Directive 2010/75/EU) refers to the restrictions laid down in Article 4 (1) and (2) of Directive 2003/4/EC, still it is possible for third parties to collect precise information on the manufacturing process of a company. Indeed, due to various Articles of the Directive (e.g. 12, 23.6, 24.2, 24.3) a considerable amount of information freely circulates, which could be abused.

### 3. Intervention of the European Courts

- **The Proportionality Principle in the European Court of Justice case law<sup>1</sup>**

The ABNA case concerning an EU sectoral Directive<sup>2</sup> the Court decided that *"the right of property... forms part of general principles of Community law. However, those principles are not absolute but must be viewed in relation to their social function. Consequently, the exercise of the right to property ...may be restricted, provided restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute in relation to the aim pursued a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed"* (point 87). The Court held that the obligation for manufacturers to indicate the exact composition of product feedstuff at a customer's demand was infringing the proportionality principle as this could not be justified *"by the objective of protecting public health which is pursued and manifestly goes beyond what is necessary to attain that objective"* (point 83).

The Court further indicated that the passing on relevant data to the authorities (under strict confidentiality) was enough to fulfil the aim of the Directive *"it must be point out that Article .... provides that manufacturers of the substance are obliged to make available to the authorities responsible for carrying out inspections, on request, any document concerning the composition ....which enables the accuracy of the information given by the labelling to be verified"* (point 84).

- **The pending case on REACH and environmental information**

Similar questions are at stake in a case recently lodged before the EU Courts by some NGOs (T-245/11) against ECHA following a rejection of their request for access to documents on certain pieces of confidential information contained in registration dossiers.

The case requires interpreting the REACH Regulation text and the intention of the legislator on the extent of the commercial information to be protected. In a broader way, it gives also the opportunity for the Court to confirm that the balancing exercise between the public interest in disclosure and the specific interest served by a refusal to disclose must be carried out in each individual case. At last, it will give the Court the occasion to define a reasonable and proportionate interpretation of the terms "environmental information" pursuant to the Aarhus Convention.

<sup>1</sup> See for example the ABNA Case – ABNA V/s Secretary of State for Health and others, C-453/03, judgment form 6 December 2005.

<sup>2</sup> Directive 2002/2 of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedstuff, OJ L 63, 06 03 2002, p 23.

#### 4. Improvement and consistency are clearly needed

As showed in the examples above, proprietary confidential company data has been addressed in piecemeal fashion at sectoral level and there is no EU scheme on their legal protection or enforcement.

Furthermore, as identified in the recently published study of the Commission<sup>3</sup> there is no harmonised system for the protection of such data within the European Union. All Member States offer some form of protection, although in one or two of them the protection is extremely limited. In some countries the protection is effective in others sometimes because of the difficulty in enforcement the law provides inadequate protection.

Therefore, companies have difficulties when a secret is stolen to stop goods produced with this stolen secret within the European Union. In addition, companies also face problems if goods are produced outside the European Union and shipped to one of its borders since the nature and the scope of protection varies considerably in the Single Market, leading to fragmentation of enforcement. This study also highlights the increasing need for adequate protection. A second survey is on its way to gather facts and examples to measure the economic consequences of the current situation.

**As a consequence, since the legislation on CBI is a patchwork both at EU and national level, we need to have a clear recognition of the:**

- Principles regarding legal protection and ownership and proportionality, non-discriminatory application. These can be derived from the EU sectoral legislation adopted in so far or currently under negotiations, the European Court of Justice case law, the Lisbon Treaty and the newly integrated European Charter on Fundamental Rights, and international convention such as the TRIPs Agreement.
- Parameters on how to strike the balance between ownership and other legitimate interests in a proportionate manner. By exception, data may be made available for reasons of overwhelming interest such as health protection, safety, environment and animal welfare. But since it is an exception, it has to be interpreted on a restrictive way.
- Mechanisms regarding disclosure should it be decided, including ways and criteria by which this can take place, i.e. reading rooms in Canada.
- Trade Secrets need to be granted an enhanced general protection, including adequate enforcement mechanisms both at EU and Member State levels.

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<sup>3</sup> "Report on Trade secrets for the European Commission", published on the web site of DG MARK on 13 January 2012

## 5. In conclusion

There is an urgent need that legislator at national or EU levels improve the present situation by systematically improving legal protection and enforcement of confidential proprietary company data.

Furthermore, authorities in charge of the application of various legislations need to strike the balance at the right place to avoid negating legitimate right of companies, while providing the necessary level of transparency to the public, when identified.

### *Contacts:*

*Nicole L Maréchal, Senior Legal Counsellor  
& Governance Officer  
[nma@cefic.be](mailto:nma@cefic.be)  
++ 32 2 676 72 18*

## **Appendix**

### **Examples of typical CBI:**

Research and development plans and strategies; reports and analysis; research notebook records. Pilot plant and commercial plant: logbooks, operating data; new product concepts and projects. Design of a product or a process; formulation or composition of a substance.

Production methods and recipes and application know-how; product and process designs and drawings; process and analysis methodologies; analytical methods for impurities and identity & concentration analysis; manufacturing tool, equipment specifications and process.

The degree of purity and the identity of the of impurities and additives.

Method of manufacturing; operating procedures: steady state, start-up, shut-down, emergency. Strategic plans; business methods and business plans; customer, vendor, logistics supplier, distributor and toll manufacturer information.

Warehouse and distribution information; Sales and service force information.

### **Economic Importance of the EU chemicals industry**

The EU chemicals sector is a key driver of economic development and wealth creation, providing modern products and materials that enable technical solutions in virtually all parts of the economy. With a workforce of 1.2 million and sales of €491 billion in 2010, it is one of the largest industrial sectors and an important source of direct and indirect employment in many regions of the European Union.

### **R&D spending in the European Union**

With €8.1 billion in 2008, R&D spending in the chemicals industry in the European Union was significant and represented about 4.2 per cent of added value in value terms. In absolute figures, R&D spending in the chemicals industry was valued at an average annual level of €7.8 billion in the European Union during the period from 1998 to 2008.

### **About Cefic**

Cefic, the European Chemical Industry Council, is the Brussels-based organisation representing the European chemicals industry. Created in 1972, it represents 29,000 companies, including SMEs, which produce about 21 per cent of the world's chemicals. For more information, go to [www.cefic.org](http://www.cefic.org) – Cefic's website.

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Dear Francesca  
Not sure, but perhaps this survey could be interesting to your economic team.  
I will probably go there, and try to get a list of participants – and if I can announce the conference of June  
Regards

**EUROPEAN COMMISSION**  
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**From:** AEGIS [mailto:[rkoumeri@gmail.com](mailto:rkoumeri@gmail.com)]  
**Sent:** Thursday, March 22, 2012 8:00 AM  
**To:** [@ec.europa.eu;](mailto:@ec.europa.eu;) (COMP); (ECFIN);  
(ENTR); (ENTR); (ENTR);  
(ENTR); I (ENTR); (ENTR); a (INFO);  
(INFSO); (JRC); (JRC); (MARKT);  
(JRC); (MARKT); (RTD); (RTD);  
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I (RTD); [@econ.kuleuven.be;](mailto:@econ.kuleuven.be;) @oecd.org;  
**Cc:** Franco Malerba; (RTD); aegis; Dimitris Prassas; (RTD)  
**Subject:** Re: INVITATION TO AEGIS PROJECT WORKSHOP Brussels 29 March 2012 UPDATED

## INVITATION TO:

The AEGIS-project "Advancing knowledge-Intensive Entrepreneurship and Innovation for Economic Growth and Social Well-being in Europe" ( funded by the FP7 SSH research programme with Prof. Malerba as coordinator) is organizing **on the 29 March 2012 at the European Commission Representation in Belgium Rue Archimède 73 B-1000 Bruxelles** a seminar to present the results of an European survey results on 4004 newly established knowledge intensive firms in Europe. The workshop provides an opportunity for academicians, European statistical system and European policy makers to discuss the implications of the survey results for European innovation and growth policies and social development in the context of Europe 2020

1

The AEGIS project (funded by FP7 Social Sciences and Humanities programme) studies knowledge-intensive entrepreneurship (KIE), its characteristics, boundaries, scope and incentives in high technology as well as in low technology sectors and in services. It focuses on knowledge-intensive entrepreneurship as a necessary mechanism and an agent of change mediating between the creation of knowledge and its transformation into economic activity. Knowledge-intensive entrepreneurship is perceived herein as a core interface between two interdependent systems: the knowledge generation and diffusion system, on the one hand, and the productive system, on the other. Both systems shape and are shaped by the broader social context – including customs, culture and institutions – thus also pointing at the linkage of entrepreneurship to that context.

We would like to invite you to participate in this workshop and bring your experience and your valuable ideas and thoughts and in particular to participate in the Dialogue session.

**We thank you in advance for your cooperation and kindly ask you ,if you are interested to register before *March 23* by email to :**

**[rcoum@planet.gr](mailto:rcoum@planet.gr) or [Franco.Malerba@unibocconi.it](mailto:Franco.Malerba@unibocconi.it)**

#### **The Project coordinators**

**Prof. Franco Malerba, University of Bocconi Scientific Coordinator [Franco.Malerba@unibocconi.it](mailto:Franco.Malerba@unibocconi.it)**

**Raphael Koumeri      PLANET S.A. Administrative Coordinator [rcoum@planet.gr](mailto:rcoum@planet.gr)**

**Scientific officer:      B5, [\\_\\_\\_\\_\\_@ec.europa.eu](mailto:_____@ec.europa.eu)**





Advancing Knowledge-Intensive Entrepreneurship and Innovation  
for Economic Growth and Social Well-being in Europe

**Project No 225134**

**Workshop on Survey Results  
Proposed Agenda**

**Brussels 29 March 2012**

**Venue:**

**European Commission Representation in Belgium**

**Rue Archimède 73  
B-1000 Bruxelles**

## Participants –partners

Organisation	Short Name	Country	Participants
European Commission	EC		Marianne Paasi Scientific Officer
PLANET S.A.	PLANET	Greece	Raphael Koumeri Soumi Papadopoulou
Università Commerciale "Luigi Bocconi"	UB	Italy	Franco Malerba
National Technical University of Athens	LIEE-NTUA	Greece	Yannis Caloghirou Nicholas Vonortas (US) Aimilia Protogerou Aggelos Tsakanikas
Institute for Management of Innovation and Technology	IMIT	Sweden	Maureen McKelvey
University College London	UCL	United Kingdom	Slavo Radosevic
COMMISSION experts / administrators			
Policy makers			

## Agenda – 29 March 2012

Time	Topics
09:30 -09:45	<b>Arrival of participants</b>
09:45 - 10:00	<b><i>The AEGIS project in the context of European innovation policy : Franco Malerba</i></b>
10:00 – 11:00	<b><i>The results of the survey : Yannis Caloghirou , Aimilia Protogerou</i></b> Comments: <b>Veijo Ritola TBC</b>
11:00- 11:15	<i>Coffee break</i>
11:15 - 12:00	<b><i>Analysis and interpretation of the AEGIS Survey on</i></b> - <i>firms organization and strategies: Maureen McKelvey</i> - <i>national innovation systems Slavo Radosevic</i> - <i>public policy: Nicholas Vonortas</i>
12:00 -13:00	<b><i>Dialogue with policy makers : exploiting the results of the survey and their interpretation to the elaboration of development strategies</i></b> <b><i>Panel with representatives of European Organizations.</i></b>
13:00 – 13.30	<b><i>Conclusions and the way ahead</i></b> <b>Marianne Paasi and Franco Malerba</b>



23



(GROW)

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 04 May 2012 21:04  
**To:** (MARKT)  
**Cc:** de Martinis, Lorenzo  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear

Unfortunately we both were in a meeting and could not take your call.

As deadline for the first interim study we agreed the beginning of May. However, this was determined before the meeting with the Coalition. Our work plans have been shifted since last week the Coalition organized a second meeting, as announced on occasion of our first meeting in Brussels, to let us get in contact with on-the-field experience of persons dealing with trade secrets issues within different companies. In addition, the Coalition provided us just some days ago with the results of a survey on trade secrets performed by IFRA – International Fragrance Association – among its members, together with relevant methodology. As you may remember, Mr. pointed out his previous experience in survey performance so we were willing to leverage on this to prepare a sounder plan for our survey.

The legal as well as the economic analysis are almost completed and under final review. We are finalizing the survey questionnaires and methodology. In addition, according to the material provided by , your colleague from the Analysis, Impact and Evaluation unit, we are preparing some charts/figures that summarize the main findings of the analysis performed.

We trust to be able to provide the first interim study for Monday, May 22, which is more than one month in advance of the conference in Brussels.

If in the meantime you need some specific information (e.g. ranking of sectors), please let us know so we can provide it to you prior of submission of the first interim study.

Lastly, we understood that the conference date was June 27, as it has been said to the Coalition. Now we understand that it has been fixed for June 29. Can you please confirm this? We had other business arrangements in the fourth week of June and we scheduled them so to be available for the 27. If we need to change our plans, please let us know.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
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Think twice and protect the environment, now.

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**From:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Sent:** Friday, May 04, 2012 07:11 PM

**To:** de Martinis, Lorenzo; Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Lorenzo and dear Francesca

I have tried to call you without success.

I was expecting to receive the first interim report yesterday or in any case during the course of this week. Monday morning I have a meeting with the team to discuss the project and in particular the preparation of the conference of 29/06.

The Interim report is crucial to that effect, among others because we need to know which sectors and trade associations we need to reach.

If you would be so kind to give me call Monday morning – I will be available as from 08:00 a.m. I am providing you with my mobile phone in case for some reason you cannot reach me in my office (+32 2 29 9 99 99).

Best regards

EUROPEAN COMMISSION  
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---

**From:** (MARKT)  
**Sent:** Friday, March 09, 2012 1:13 PM  
**To:** 'de Martinis, Lorenzo'  
**Cc:** (MARKT); Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Francesca, dear Lorenzo

On the deadline to submit the first interim report: I think that at this stage we can be flexible and move it to the beginning of May (02/05/2012). I will probably have to ask you to send me an email with a request for the extension and some justification. I will come back to you on this.

On the meeting: for us your suggestion is fine. We will have our progress meeting starting at 14:30 or 15:00 and then we go to see the Coalition. In order to be sure that we are not forced to hurry up I propose that we set the meeting with the Coalition for 16:30. The Coalition is happy with this arrangement, even if it is not ideal as they would prefer to start earlier. On the other hand, will you be able to attend this second meeting for a good hour or 90 mns, or will have to hurry back to the airport?

Best regards

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---

**From:** de Martinis, Lorenzo [<mailto:Lorenzo.de.Martinis@bakermckenzie.com>]  
**Sent:** Tuesday, March 06, 2012 7:26 PM  
**To:** (MARKT)  
**Cc:** (MARKT); Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear

As anticipated by Francesca we share your view that liaising with the Coalition would be beneficial for our project, particularly for the conference and the survey. We are happy to meet them and share ideas.

Regarding the date, the 22th is fine. However, also in order to optimize on costs, we would like to leverage on the fact that Francesca will be in Paris in the morning of the 22th to see a client. Following that she can be in Brussels and available for the meetings from 2.30-3pm. We really hope that it is possible to organize project review and meeting with the Coalition in a row.

Regarding the deadline to submit the first interim report, for the sake of clarity we wanted to confirm the understanding shared at the kick-off meeting: in consideration of the complexity of the tasks we agreed on the opportunity to allocate more time to the structuring of the project work and the definition of the regulatory/economic framework. Thus the dates for the delivery of the first interim report and the conference were rescheduled on the first week of May and third week of June, respectively. We agreed to make all efforts to recover as much time as possible over the other phases.

We look forward to your thoughts.

Kindest regards,

Francesca and Lorenzo

Lorenzo de Martinis  
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**From:** @ec.europa.eu [<mailto:@ec.europa.eu>]  
**Sent:** Tuesday, March 06, 2012 12:54 PM  
**To:** Gaudino, Francesca  
**Cc:** de Martinis, Lorenzo; [ec.europa.eu](mailto:ec.europa.eu)  
**Subject:** 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Francesca

According to the schedule we should have done our second progress meeting last week. I would suggest that we do it during this month.

In the meantime, the Trade Secret & Innovation Coalition would like to meet you and has suggested to put up a meeting with you and us.

I think it could only help, I am particularly keen in sharing ideas on the conference of June.

Such a meeting is not foreseen in our contract and therefore it is up to you to decide on whether you would like to attend and bear the respective costs.

However, I am happy to make that meeting coincide with our progress meeting, so that you do not have to fly to Brussels twice.

(from Hill+Knowlton) has proposed the following possible dates the 22th or the 28<sup>th</sup> of March.

28/03 is the deadline for you to deliver the first interim report, so perhaps 22/03 is more appropriate.

In such a case we would meet here in the morning for the progress meeting and then go to see the Coalition after lunch.

Let me know how you find it.

Kind regards

**EUROPEAN COMMISSION**

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24



**From:** (MARKT)  
**Sent:** 06 May 2012 13:28  
**To:** 'Gaudino, Francesca'  
**Cc:** de Martinis, Lorenzo  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Francesca

I have a meeting with [redacted] and the rest of the team, tomorrow at 10:00 to provide an update of the project.

I was hoping to have the interim report or at least announce that it would be reaching us shortly.

The Coalition is a very relevant stakeholder and a very valuable for the conference and the study, however this project cannot be, or even look like being, driven by it. They do not own the project and they do not shift deadlines. So in the future, if there are any expected delays, for whatever reason – including any reason related to the Coalition, I would appreciate that you would contact us beforehand.

For my meeting of tomorrow, I would like to have an idea of which sectors, business organisations or companies we should direct our efforts in terms of sending invitations or disseminating the conference.

The interim report would be very helpful for this because it will:

- Rank sectors in terms of their trade secret intensity; that is, the ranking of key manufacturing and service sectors in terms of dependency on trade secrets for their innovative and competitive performance.
- Identify, for each of the Member States, and for the European Union at large, a representative sample of trade associations and companies, in particular SMEs, who could be surveyed on the issue of trade secret use and protection. A market research team should acquire and or process appropriate business directory and statistical data bases for each Member State in order to draw up a list of companies to be surveyed in each of the identified key sectors. This list will ensure that all size types of companies are represented. The consultant shall also identify who within the relevant companies should be surveyed (e.g. legal compliance officer, business strategy department, CEO, engineering department, marketing director, IP management, etc;) given the nature/size of the company and the probable type of trade secrets it can be expected to rely on (that the results of Task 1 should allow for informed choices);

Also in preparation of the conference we expect you to provide us with an invitation list.

In view of the above, perhaps you could send us any material even if provisional and in whatever format on the sectors and companies. [redacted] mentioned to me that he thinks that it would be not very good if the conference would be too much focus on technology intensive industries. This is because the trade secrets should not be interpreted as a competitor to patents. In this context it would be good to approach services and commercial sectors which protect other sort of confidential information (business processes, marketing information, etc...)

Let me know whether you can help me on this, I will be in my office as from 08:00 if you like to speak on the phone.

Best regards

**From:** Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]  
**Sent:** Friday, May 04, 2012 9:04 PM  
**To:** (MARKT)  
**Cc:** de Martinis, Lorenzo  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear

Unfortunately we both were in a meeting and could not take your call.

As deadline for the first interim study we agreed the beginning of May. However, this was determined before the meeting with the Coalition. Our work plans have been shifted since last week the Coalition organized a second meeting, as announced on occasion of our first meeting in Brussels, to let us get in contact with on-the-field experience of persons dealing with trade secrets issues within different companies. In addition, the Coalition provided us just some days ago with the results of a survey on trade secrets performed by IFRA – International Fragrance Association – among its members, together with relevant methodology. As you may remember, Mr. pointed out his previous experience in survey performance so we were willing to leverage on this to prepare a sounder plan for our survey.

The legal as well as the economic analysis are almost completed and under final review. We are finalizing the survey questionnaires and methodology. In addition, according to the material provided by I, your colleague from the Analysis, Impact and Evaluation unit, we are preparing some charts/figures that summarize the main findings of the analysis performed.

We trust to be able to provide the first interim study for Monday, May 22, which is more than one month in advance of the conference in Brussels.

If in the meantime you need some specific information (e.g. ranking of sectors), please let us know so we can provide it to you prior of submission of the first interim study.

Lastly, we understood that the conference date was June 27, as it has been said to the Coalition. Now we understand that it has been fixed for June 29. Can you please confirm this? We had other business arrangements in the fourth week of June and we scheduled them so to be available for the 27. If we need to change our plans, please let us know.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**From:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Sent:** Friday, May 04, 2012 07:11 PM  
**To:** de Martinis, Lorenzo; Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Lorenzo and dear Francesca

I have tried to call you without success.

I was expecting to receive the first interim report yesterday or in any case during the course of this week. Monday morning I have a meeting with [redacted] and the team to discuss the project and in particular the preparation of the conference of 29/06.

The Interim report is crucial to that effect, among others because we need to know which sectors and trade associations we need to reach.

If you would be so kind to give me call Monday morning – I will be available as from 08:00 a.m. I am providing you with my mobile phone in case for some reason you cannot reach me in my office (+32 [redacted]).

Best regards

EUROPEAN COMMISSION  
Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, B-1049 Brussels  
Tel. (+32) 22 94 11 11  
mailto: [redacted]@ec.europa.eu

---

**From:** [redacted] (MARKT)  
**Sent:** Friday, March 09, 2012 1:13 PM  
**To:** 'de Martinis, Lorenzo'  
**Cc:** [redacted] (MARKT); Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Francesca, dear Lorenzo

On the deadline to submit the first interim report: I think that at this stage we can be flexible and move it to the beginning of May (02/05/2012). I will probably have to ask you to send me an email with a request for the extension and some justification. I will come back to you on this.

On the meeting: for us your suggestion is fine. We will have our progress meeting starting at 14:30 or 15:00 and then we go to see the Coalition. In order to be sure that we are not forced to hurry up I propose that we set the meeting with the Coalition for 16:30. The Coalition is happy with this arrangement, even if it is not ideal as they would prefer to start earlier. On the other hand, will you be able to attend this second meeting for a good hour or 90 mns, or will have to hurry back to the airport?

Best regards

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D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, B-1049 Brussels  
Tel. (+32) 22 94 11 11  
mailto: [redacted]@ec.europa.eu

---

**From:** de Martinis, Lorenzo [mailto:Lorenzo.de.Martinis@bakermckenzie.com]  
**Sent:** Tuesday, March 06, 2012 7:26 PM  
**To:** [redacted] (MARKT)

**Cc:** (MARKT); Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear

As anticipated by Francesca we share your view that liaising with the Coalition would be beneficial for our project, particularly for the conference and the survey. We are happy to meet them and share ideas.

Regarding the date, the 22th is fine. However, also in order to optimize on costs, we would like to leverage on the fact that Francesca will be in Paris in the morning of the 22th to see a client. Following that she can be in Brussels and available for the meetings from 2.30-3pm. We really hope that it is possible to organize project review and meeting with the Coalition in a row.

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We look forward to your thoughts.

Kindest regards,

Francesca and Lorenzo

Lorenzo de Martinis  
Partner  
Studio Professionale Associato a  
Baker & McKenzie  
Piazza Filippo Meda, 3  
20121 Milano MI - Italy  
Tel: +39 02 76231 334  
Fax: +39 02 76231 501



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**From:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Sent:** Tuesday, March 06, 2012 12:54 PM  
**To:** Gaudino, Francesca  
**Cc:** de Martinis, Lorenzo; @ec.europa.eu  
**Subject:** 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Francesca

According to the schedule we should have done our second progress meeting last week. I would suggest that we do it during this month.

In the meantime, the Trade Secret & Innovation Coalition would like to meet you and has suggested to put up a meeting with you and us.

I think it could only help, I am particularly keen in sharing ideas on the conference of June.



Such a meeting is not foreseen in our contract and therefore it is up to you to decide on whether you would like to attend and bear the respective costs.

However, I am happy to make that meeting coincide with our progress meeting, so that you do not have to fly to Brussels twice.

(from Hill+Knowlton) has proposed the following possible dates the 22th or the 28<sup>th</sup> of March.

28/03 is the deadline for you to deliver the first interim report, so perhaps 22/03 is more appropriate.

In such a case we would meet here in the morning for the progress meeting and then go to see the Coalition after lunch.

Let me know how you find it.

Kind regards

**EUROPEAN COMMISSION**

Internal Market and Services DG

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25



**From:** de Martinis, Lorenzo <Lorenzo.de.Martinis@bakermckenzie.com>  
**Sent:** 07 May 2012 01:00  
**To:** (MARKT); Gaudino, Francesca  
**Subject:** R: RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear :

Your comments are duly noted.

First, the involvement of the Coalition in the project will always remain peripheral and instrumental: we are on your same page on this. We have absolutely clear in mind that project and deliverables are solely driven by you and us. We are using them because they can provide specific info, including their recent survey results that are precious considering the lack of precedents in the trade secrets field.

Second, the First Interim Study discusses the empirical results we found as per the tender commitments; what we are doing now is to summarize the findings described in the report in terms of European industry standard codes (NACE codes, as agreed with you) in order to provide the industry ranking. As you are aware, we are not expected to independently generate original empirical results, but to report what we found in the literature. As you are already aware, our throughout literature research and analysis showed that data specifically targeted on trade secrets are limited (again, that is why we also needed the input from the Coalition). The ranking activity is not a trivial task and our analysts need a little more time to elaborate and try to extract some sense out of the research results. What we are trying to do is give you some added value by running the extra mile and we hope you will appreciate effort and approach.

The list of companies to be surveyed and specific persons within companies would come as a consequence of the rankings. Same for the companies to be invited to Brussels, we already have mailing lists but we need to fine tune according to the rankings. I can anticipate that the technology intensive sectors are the main but not the only focus.

We are of course willing to support you for your meeting with ' and team tomorrow. I was leaving to when I received your message on Friday, but Francesca remained in the Office because she is working full time to follow completion of the Interim Report. She can be available to speak from 8.30 tomorrow morning and anticipate more on industry rankings, list of companies and status of completion of the Report.

Kind regards,

Lorenzo

---

**Da:** @ec.europa.eu [mailto:]@ec.europa.eu  
**Inviato:** Sunday, May 06, 2012 01:27 PM  
**A:** Gaudino, Francesca  
**Cc:** de Martinis, Lorenzo  
**Oggetto:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Francesca

I have a meeting with and the rest of the team, tomorrow at 10:00 to provide an update of the project.

I was hoping to have the interim report or at least announce that it would be reaching us shortly.

The Coalition is a very relevant stakeholder and a very valuable for the conference and the study, however this project cannot be, or even look like being, driven by it. They do not own the project and they do not shift deadlines. So in the future, if there are any expected delays, for whatever reason – including any reason related to the Coalition, I would appreciate that you would contact us beforehand.

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Let me know whether you can help me on this, I will be in my office as from 08:00 if you like to speak on the phone.

Best regards

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[mailto:](mailto:mailto:)

[@ec.europa.eu](mailto:)

---

**From:** Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]  
**Sent:** Friday, May 04, 2012 9:04 PM  
**To:** [redacted] (MARKT)  
**Cc:** de Martinis, Lorenzo  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coallition

Dear

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Best regards,  
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Counsel

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20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**From:** [francesca.gaudino@ec.europa.eu](mailto:francesca.gaudino@ec.europa.eu) [mailto:[francesca.gaudino@ec.europa.eu](mailto:francesca.gaudino@ec.europa.eu)]  
**Sent:** Friday, May 04, 2012 07:11 PM  
**To:** de Martinis, Lorenzo; Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Lorenzo and dear Francesca

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Best regards

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D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, B-1049 Brussels  
Tel. (+32) 22 95  
mailto:  
@ec.europa.eu

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**From:** (MARKT)  
**Sent:** Friday, March 09, 2012 1:13 PM  
**To:** 'de Martinis, Lorenzo'  
**Cc:** (MARKT); Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Francesca, dear Lorenzo

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**From:** de Martinis, Lorenzo [mailto:Lorenzo.de.Martinis@bakermckenzie.com]  
**Sent:** Tuesday, March 06, 2012 7:26 PM  
**To:** (MARKT)  
**Cc:** (MARKT); Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

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May and third week of June, respectively. We agreed to make all efforts to recover as much time as possible over the other phases.

We look forward to your thoughts.

Kindest regards,

Francesca and Lorenzo

Lorenzo de Martinis  
Partner  
Studio Professionale Associato a  
Baker & McKenzie  
Piazza Filippo Meda, 3  
20121 Milano MI - Italy  
Tel: +39 02 76231 334  
Fax: +39 02 76231 501



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**From:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Sent:** Tuesday, March 06, 2012 12:54 PM  
**To:** Gaudino, Francesca  
**Cc:** de Martinis, Lorenzo; @ec.europa.eu  
**Subject:** 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Francesca

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In the meantime, the Trade Secret & Innovation Coalition would like to meet you and has suggested to put up a meeting with you and us.

I think it could only help, I am particularly keen in sharing ideas on the conference of June.

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Let me know how you find it.

Kind regards

**EUROPEAN COMMISSION**

Internal Market and Services DG

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[mailto:\\_\\_\\_\\_\\_@ec.europa.eu](mailto:_____@ec.europa.eu)

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**From:** de Martinis, Lorenzo <Lorenzo.de.Martinis@bakermckenzie.com>  
**Sent:** 07 May 2012 14:53  
**To:** (MARKT); Gaudino, Francesca  
**Subject:** R: RE: RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Understood, thank you.  
Lorenzo

---

**Da:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Inviato:** Monday, May 07, 2012 08:17 AM  
**A:** de Martinis, Lorenzo; Gaudino, Francesca  
**Oggetto:** RE: RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Lorenzo  
Dear Francesca

Thank you for your clarifications.

I will inform . that you are planning to provide the report later than expected, but as soon as possible.

It is true that I prefer a good report than a timely one, but I see the conference as being crucial to the way in which the project will be picked up by the hierarchy, other services of the Commission, the Member States and the Parliament. It needs good preparation, and for that to happen the sooner we have your material the better.

I will contact you after my meeting with . perhaps this afternoon – or tomorrow the latest.

Regards

EUROPEAN COMMISSION  
Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, R-1049 Brussels  
Tel. (+32) 22 9:  
<mailto: @ec.europa.eu>

---

**From:** de Martinis, Lorenzo [mailto:Lorenzo.de.Martinis@bakermckenzie.com]  
**Sent:** Monday, May 07, 2012 1:00 AM  
**To:** (MARKT); Gaudino, Francesca  
**Subject:** R: RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear

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Kind regards,

Lorenzo

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**Da:** [lorenzod@ec.europa.eu](mailto:lorenzod@ec.europa.eu) [mailto:[lorenzod@ec.europa.eu](mailto:lorenzod@ec.europa.eu)]  
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**A:** Gaudino, Francesca  
**Cc:** de Martinis, Lorenzo  
**Oggetto:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

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The Coalition is a very relevant stakeholder and a very valuable for the conference and the study, however this project cannot be, or even look like being, driven by it. They do not own the project and they do not shift deadlines. So in the future, if there are any expected delays, for whatever reason – including any reason related to the Coalition, I would appreciate that you would contact us beforehand.

For my meeting of tomorrow, I would like to have an idea of which sectors, business organisations or companies we should direct our efforts in terms of sending invitations or disseminating the conference.

The interim report would be very helpful for this because it will:

- Rank sectors in terms of their trade secret intensity; that is, the ranking of key manufacturing and service sectors in terms of dependency on trade secrets for their innovative and competitive performance.
- Identify, for each of the Member States, and for the European Union at large, a representative sample of trade associations and companies, in particular SMEs, who could be surveyed on the issue of trade secret use and protection. A market research team should acquire and or process appropriate business directory and statistical data bases for each Member State in order to draw up a list of companies to be surveyed in each of the identified key sectors. This list will ensure that all size types of companies are represented. The consultant shall also identify who within the relevant companies should be surveyed (e.g. legal compliance officer, business strategy department, CEO, engineering department, marketing director, IP management, etc;) given the nature/size of the company and the probable type of trade secrets it can be expected to rely on (that the results of Task 1 should allow for informed choices);

Also in preparation of the conference we expect you to provide us with an invitation list.

In view of the above, perhaps you could send us any material even if provisional and in whatever format on the sectors and companies. Jean mentioned to me that he thinks that it would be not very good if the conference would be too much focus on technology intensive industries. This is because the trade secrets should not be interpreted as a competitor to patents. In this context it would be good to approach services and commercial sectors which protect other sort of confidential information (business processes, marketing information, etc...)

Let me know whether you can help me on this, I will be in my office as from 08:00 if you like to speak on the phone.

Best regards

EUROPEAN COMMISSION  
Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, R-1049 Brussels  
Tel. (+32) 22 5  
mailto: [dec.europa.eu](mailto:dec.europa.eu)

---

**From:** Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]  
**Sent:** Friday, May 04, 2012 9:04 PM  
**To:** (MARKT)  
**Cc:** de Martinis, Lorenzo  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear

Unfortunately we both were in a meeting and could not take your call.

As deadline for the first interim study we agreed the beginning of May. However, this was determined before the meeting with the Coalition. Our work plans have been shifted since last week the Coalition organized a second meeting, as announced on occasion of our first meeting in Brussels, to let us get in contact with on-the-field experience of persons dealing with trade secrets issues within different companies. In addition, the Coalition provided us just some days ago with the results of a survey on trade secrets performed by IFRA – International Fragrance Association – among its members, together with relevant methodology. As you may remember, Mr. pointed out his previous experience in survey performance so we were willing to leverage on this to prepare a sounder plan for our survey.

The legal as well as the economic analysis are almost completed and under final review. We are finalizing the survey questionnaires and methodology. In addition, according to the material provided by , your colleague from the Analysis, Impact and Evaluation unit, we are preparing some charts/figures that summarize the main findings of the analysis performed.

We trust to be able to provide the first interim study for Monday, May 22, which is more than one month in advance of the conference in Brussels. If in the meantime you need some specific information (e.g. ranking of sectors), please let us know so we can provide it to you prior of submission of the first interim study.

Lastly, we understood that the conference date was June 27, as it has been said to the Coalition. Now we understand that it has been fixed for June 29. Can you please confirm this? We had other business arrangements in the fourth week of June and we scheduled them so to be available for the 27. If we need to change our plans, please let us know.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**From:** [redacted]@ec.europa.eu [mailto:[redacted]]@ec.europa.eu  
**Sent:** Friday, May 04, 2012 07:11 PM  
**To:** de Martinis, Lorenzo; Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Lorenzo and dear Francesca

I have tried to call you without success.

I was expecting to receive the first interim report yesterday or in any case during the course of this week.

Monday morning I have a meeting with [redacted] and the team to discuss the project and in particular the preparation of the conference of 29/06.

The Interim report is crucial to that effect, among others because we need to know which sectors and trade associations we need to reach.

If you would be so kind to give me call Monday morning – I will be available as from 08:00 a.m. I am providing you with my mobile phone in case for some reason you cannot reach me in my office (+32 [redacted])

Best regards

EUROPEAN COMMISSION  
Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2. B-1049 Brussels  
Tel. (+32) 22  
mailto:[redacted]@ec.europa.eu

---

**From:** [redacted] (MARKT)  
**Sent:** Friday, March 09, 2012 1:13 PM  
**To:** 'de Martinis, Lorenzo'  
**Cc:** [redacted] (MARKT); Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition



Dear Francesca, dear Lorenzo

On the deadline to submit the first interim report: I think that at this stage we can be flexible and move it to the beginning of May (02/05/2012). I will probably have to ask you to send me an email with a request for the extension and some justification. I will come back to you on this.

On the meeting: for us your suggestion is fine. We will have our progress meeting starting at 14:30 or 15:00 and then we go to see the Coalition. In order to be sure that we are not forced to hurry up I propose that we set the meeting with the Coalition for 16:30. The Coalition is happy with this arrangement, even if it is not ideal as they would prefer to start earlier. On the other hand, will you be able to attend this second meeting for a good hour or 90 mns, or will have to hurry back to the airport?

Best regards

EUROPEAN COMMISSION  
Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, B-1049 Brussels  
Tel. (+32) 22  
mailto: [dec.europa.eu](mailto:dec.europa.eu)

---

**From:** de Martinis, Lorenzo [<mailto:Lorenzo.de.Martinis@bakermckenzie.com>]  
**Sent:** Tuesday, March 06, 2012 7:26 PM  
**To:** (MARKT)  
**Cc:** (MARKT); Gaudino, Francesca  
**Subject:** RE: 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear

As anticipated by Francesca we share your view that liaising with the Coalition would be beneficial for our project, particularly for the conference and the survey. We are happy to meet them and share ideas.

Regarding the date, the 22th is fine. However, also in order to optimize on costs, we would like to leverage on the fact that Francesca will be in Paris in the morning of the 22th to see a client. Following that she can be in Brussels and available for the meetings from 2.30-3pm. We really hope that it is possible to organize project review and meeting with the Coalition in a row.

Regarding the deadline to submit the first interim report, for the sake of clarity we wanted to confirm the understanding shared at the kick-off meeting: in consideration of the complexity of the tasks we agreed on the opportunity to allocate more time to the structuring of the project work and the definition of the regulatory/economic framework. Thus the dates for the delivery of the first interim report and the conference were rescheduled on the first week of May and third week of June, respectively. We agreed to make all efforts to recover as much time as possible over the other phases.

We look forward to your thoughts.

Kindest regards,

Francesca and Lorenzo

Lorenzo de Martinis  
Partner

Studio Professionale Associato a  
Baker & McKenzie  
Piazza Filippo Meda, 3  
20121 Milano MI - Italy  
Tel: +39 02 76231 334  
Fax: +39 02 76231 501



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**From:** [@ec.europa.eu](mailto:) [mailto: [@ec.europa.eu](mailto:)]  
**Sent:** Tuesday, March 06, 2012 12:54 PM  
**To:** Gaudino, Francesca  
**Cc:** de Martinis, Lorenzo; [@ec.europa.eu](mailto:)  
**Subject:** 2nd Progress meeting + Trade Secrets & Innovation Coalition

Dear Francesca

According to the schedule we should have done our second progress meeting last week. I would suggest that we do it during this month.

In the meantime, the Trade Secret & Innovation Coalition would like to meet you and has suggested to put up a meeting with you and us.

I think it could only help, I am particularly keen in sharing ideas on the conference of June.

Such a meeting is not foreseen in our contract and therefore it is up to you to decide on whether you would like to attend and bear the respective costs.

However, I am happy to make that meeting coincide with our progress meeting, so that you do not have to fly to Brussels twice.

(from Hill+Knowlton) has proposed the following possible dates the 22<sup>th</sup> or the 28<sup>th</sup> of March.

28/03 is the deadline for you to deliver the first interim report, so perhaps 22/03 is more appropriate.

In such a case we would meet here in the morning for the progress meeting and then go to see the Coalition after lunch.

Let me know how you find it.

Kind regards

EUROPEAN COMMISSION

Internal Market and Services DG

D3 - Fight against counterfeiting and piracy

Rue de Spa 2, B-1049 Brussels

Tel. (+32) 22

mailto: @ec.europa.eu

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27



**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 07 May 2012 19:45  
**To:** (MARKT)  
**Cc:** de Martinis, Lorenzo  
**Subject:** Ranking of Industry Sectors  
**Attachments:** EC TSS - Industry Classification.doc

Dear

Please find attached a chart that represents the translation of the ISIC code results into European NACE codes, relying on tables that we have inserted in the report and that summarize the results of the literature analysed by the economists. This table shows the propensity to patentability in different industry sectors.

By tomorrow I'll also send you some tables that we obtained having being granted access to the French CIS data.

For your information, in our study we plan to use the above sources to provide a comprehensive chart that lists trade secrets intensity in the different legal industries.

Looking forward to speaking with you tomorrow.

Have a nice evening,  
Francesca

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**Document 27a : removed**



28



(GROW)

28

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 08 May 2012 14:28  
**To:** (MARKT)  
**Cc:** de Martinis, Lorenzo; (MARKT)  
**Subject:** RE: Ranking of Industry Sectors  
**Attachments:** CIS - France 1.doc; CIS - France 2.doc; CIS - France 3.doc; CIS - France 4.doc

Dear

Thanks for your comments, which are very much to the point.

The economists' analysis takes into account the issue of trade secrets used as an alternative to patents and also as stand alone protection in circumstances where patent is not a viable or opportune option, especially in service based industries.

Even if these industries are not reported in relevant literature, they will be included among the industry fields among which will be identified the companies to be surveyed.

The same applies to the conference in the sense that companies from these fields will be invited to participate to the conference.

Attached you can find four documents containing rankings that take into account trade secret intensity according to the CIS survey. The documents are in French but the content is understandable.

Looking forward to speaking with you.

Kind regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**From:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Sent:** Tuesday, May 08, 2012 09:26 AM  
**To:** Gaudino, Francesca  
**Cc:** de Martinis, Lorenzo; @ec.europa.eu  
**Subject:** RE: Ranking of Industry Sectors

Dear Francesca,

Many thanks for the tables that show first indications of manufacturing sector's reliance on secrecy to stimulate innovation. This will obviously be important since it shows which manufacturing sectors we must ensure we cover.

If I understand correctly these preliminary results stem mainly from the available existing literature which may be scarce and therefore incomplete. Indeed, it would seem that there are other sectors, more service based, which would also rely on trade secrets or confidential business information - business services (such as advertising), software and business solutions, data management services, and all services like hotel and restaurant which use franchising schemes anchored on confidential agreements, and so on.

Trade secrets are very useful and largely used in fields where patents may provide protection, but trade secrets are also a tool for protecting intangible assets with a wider scope, by covering valuable information and know-how in activities and sectors which cannot make use of the patent system.

We would very much for your team to take note of these concerns and to the extent possible try to accommodate the need to include such sectors in the scope of the study, of the survey and therefore of the conference.

As to the conference planning I will give you a call this afternoon if it is ok with you, so that we can exchange ideas on how to forward invitations, promote the event, attract media coverage, etc.

Best regards

**EUROPEAN COMMISSION**

Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2 B-1049 Brussels  
Tel. (+32) 22

<mailto:cec.europa.eu>

---

**From:** Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]  
**Sent:** Monday, May 07, 2012 7:45 PM  
**To:** (MARKT)  
**Cc:** de Martinis, Lorenzo  
**Subject:** Ranking of Industry Sectors

Dear

Please find attached a chart that represents the translation of the ISIC code results into European NACE codes, relying on tables that we have inserted in the report and that summarize the results of the literature analysed by the economists. This table shows the propensity to patentability in different industry sectors.

By tomorrow I'll also send you some tables that we obtained having being granted access to the French CIS data.

For your information, in our study we plan to use the above sources to provide a comprehensive chart that lists trade secrets intensity in the different legal industries.

Looking forward to speaking with you tomorrow.

Have a nice evening,  
Francesca

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29



**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 21 May 2012 13:52  
**To:** @ec.europa.eu  
**Cc:** MARKT); de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study - First message  
**Attachments:** Trade Secret Project - First Interim Study.pdf

**Importance:** High

Dear .

Apparently the below message could not reach you for mailbox size limit reasons, so I will send you the documents with separate messages.

This is the first of 4 messages that will follow shortly.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**From:** Gaudino, Francesca  
**Sent:** Monday, May 21, 2012 01:05 PM  
**To:** @ec.europa.eu  
**Cc:** [ec.europa.eu](mailto:ec.europa.eu); de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study  
**Importance:** High

Dear

Please find attached the First Interim Study of the Trade Secret Project.

The documents are in pdf format, except for the legal summary charts - Appendices 4.I; 4.II and 4.III. In case of need, we may send you the parts of the documents that are of your specific interest in word format.

We remain at your disposal for any clarification.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501

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**Document 29a : removed**





30



**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 21 May 2012 13:54  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study - Second message  
**Attachments:** Appendix 2 - Legal Matrices.pdf; Appendix 1 - References.pdf  
**Importance:** High

Second message

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**From:** Gaudino, Francesca  
**Sent:** Monday, May 21, 2012 01:52 PM  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study - First message  
**Importance:** High

Dear

Apparently the below message could not reach you for mailbox size limit reasons, so I will send you the documents with separate messages.

This is the first of 4 messages that will follow shortly.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**From:** Gaudino, Francesca  
**Sent:** Monday, May 21, 2012 01:05 PM  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study  
**Importance:** High

Dear

Please find attached the First Interim Study of the Trade Secret Project.

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In case of need, we may send you the parts of the documents that are of your specific interest in word format.

We remain at your disposal for any clarification.

Best regards,  
Francesca

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Counsel

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31

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 21 May 2012 13:55  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study - Third message  
**Attachments:** Appendix 3.III - Country Specific Questionnaires - Criminal law.pdf; Appendix 3 - Country Specific Questionnaires.pdf; Appendix 3.I - Country Specific Questionnaires - IP & Commercial Law.pdf; Appendix 3.II - Country Specific Questionnaires - Competition Law.pdf

Third message

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**From:** Gaudino, Francesca  
**Sent:** Monday, May 21, 2012 01:52 PM  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study - First message  
**Importance:** High

Dear

Apparently the below message could not reach you for mailbox size limit reasons, so I will send you the documents with separate messages.

This is the first of 4 messages that will follow shortly.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**From:** Gaudino, Francesca  
**Sent:** Monday, May 21, 2012 01:05 PM  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study  
**Importance:** High

Dear

Please find attached the First Interim Study of the Trade Secret Project.

The documents are in pdf format, except for the legal summary charts - Appendices 4.I; 4.II and 4.III.



In case of need, we may send you the parts of the documents that are of your specific interest in word format.

We remain at your disposal for any clarification.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
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**Documents 31a, 31b, 31c, 31d : removed**



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3ROW)

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**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 21 May 2012 13:56  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study - Fourth message  
**Attachments:** Annex 7 - Topics of First Interim Study.pdf; Appendix 4. I - IP & Commercial Law - Summary Chart.xls; Appendix 4. II - Competition Law - Summary Chart.xls; Appendix 5 - Contributors.pdf; Appendix 6 - Draft Survey Questionnaire.pdf; Appendix 4. III - Criminal Law - Summary Chart.xls

**Importance:** High

Fourth message

---

**From:** Gaudino, Francesca  
**Sent:** Mondav. May 21, 2012 01:52 PM  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study - First message  
**Importance:** High

Dear

Apparently the below message could not reach you for mailbox size limit reasons, so I will send you the documents with separate messages.

This is the first of 4 messages that will follow shortly.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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---

**From:** Gaudino, Francesca  
**Sent:** Monday, May 21, 2012 01:05 PM  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study  
**Importance:** High

Dear

Please find attached the First Interim Study of the Trade Secret Project.

The documents are in pdf format, except for the legal summary charts - Appendices 4.I; 4.II and 4.III. In case of need, we may send you the parts of the documents that are of your specific interest in word format.

We remain at your disposal for any clarification.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501

---



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**Documents 32a, 32c, 32d, 32f : removed**





**For document 32b, see doc. 133c :**

**Published in website**



32e

Draft Survey Questionnaire

## Appendix 6

### Draft Survey Questionnaire

#### Survey on Trade Secrets and confidential business information in the Internal Market

##### **Purpose of this Survey**

On December 2011 the European Commission entrusted to Baker & McKenzie a project aimed at providing an in-depth analysis of the economic and legal scenario applying to trade secrets and confidential business information in the Internal Market. The purpose of this survey, which is part of the project, is to collect information on how European based companies manage trade secrets and confidential business information and the perceived opinions in terms of their protection and enforcement.

All information collected will be kept under strict confidentiality and will not be disclosed to third parties unless authorized by applicable laws. The information will be made publicly available and may be published through different informative means (e.g. in research and scientific works, articles, publications, Internet websites, etc.) only after anonymization and in statistical and aggregate form.

For any query or to request detailed information on the survey, please contact us at: [infosurvey@bakermckenzie.com](mailto:infosurvey@bakermckenzie.com) [Address to be confirmed].

Thanks in advance for your attention and cooperation.

##### **Structure of the Survey**

The survey is composed of the following sections.

##### **Section A – Company General Information**

##### **Section B – Company Business Activity**

##### **Section C – Management of Trade Secrets**

##### **Section D – Protection of Trade Secrets**

##### **Definition of Trade secrets**

For the purpose of this survey, trade secrets and confidential business information are identified as technical or commercial information related to the business that are not generally known or easily accessible, which has economic value (i.e. they confer a competitive advantage to the owner), and which if disclosed to a competitor would be liable to cause significant damage to the owner.

##### **Instructions for Completion**

Please select the option – or options where expressly specified that multiple choices are allowed – that best represents your position.

Where it is requested to provide percentages or level intensity (e.g. high, medium, low) if an accurate answer cannot be provided, your best estimate is acceptable.

If your company is part of a multinational group, please provide answers only on a European Union wide basis. If your companies trades in more European countries, please provide quantitative answers (e.g. turnover, number of employees, etc.) on a European Union wide basis.

Remember to press the 'Submit' button when you have finished the survey questionnaire.

**A. COMPANY GENERAL INFORMATION**

- Company name (Fill in blank)

\_\_\_\_\_

- Is the company part of a multinational group?

☐ Yes

☐ No

- Country of company incorporation (Fill in blank)

\_\_\_\_\_

- Countries where company does business (Fill in blank)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- Is the company a publicly-traded company?

☐ Yes

☐ No

- In case of a publicly-traded company, please specify (Fill in blank)

- stock exchange(s) where shares traded

\_\_\_\_\_

- stock trading symbol

\_\_\_\_\_

**B. COMPANY BUSINESS ACTIVITY**

- Nature of *products* sold or *services* provided (Check all boxes that apply):

- ☐ Retail consumer products
- ☐ Wholesale distribution to retail sellers
- ☐ Wholesale distribution to commercial users
- ☐ Manufacturer sales to wholesale distribution
- ☐ Manufacturer sales to other manufacturing
- ☐ Commodity trading
- ☐ Financial or insurance services
- ☐ Consulting services
- ☐ Advertising and marketing
- ☐ Logistics

[To be verified according to NACE categories]

- Annual Turnover for period 2009-2011 expressed in Euro (millions):

2009	€
2010	€
2011	€

- Annual Full Time Equivalent (FTE) Employees for period 2009-2011:

## Draft Survey Questionnaire

2009	
2010	
2011	

- Annual percentage of R&D expenses with respect to turnover (expressed as percent) for period 2008-2011:

2009	%
2010	%
2011	%

- With respect to R&D activities, rank in level internal R&D activities and acquisition of external R&D

- |                               |                               |                                 |                              |
|-------------------------------|-------------------------------|---------------------------------|------------------------------|
| - Internal R&D                | <input type="checkbox"/> Most | <input type="checkbox"/> Medium | <input type="checkbox"/> Few |
| - Acquisition of external R&D | <input type="checkbox"/> Most | <input type="checkbox"/> Medium | <input type="checkbox"/> Few |

### C. MANAGEMENT OF TRADE SECRETS

1. Specify the nature of your trade secrets (Check all boxes that apply):

- ☐ Customer lists
- ☐ Supplier list
- ☐ Manufacturing processes
- ☐ Product technology
- ☐ Software
- ☐ Procedural know how
- ☐ Organizational processes
- ☐ Other (Fill in blank space) \_\_\_\_\_

2. Do you consider trade secrets as strategic value in terms of innovative growth performance and return on investment

- ☐ Yes
- ☐ No. If no, why not? (Fill in blank space) \_\_\_\_\_

3. What do you consider it is the importance of trade secrets relative to intangible assets in general?

- ☐ High
- ☐ Medium
- ☐ Low

4. Reasons for holding as trade secrets Intellectual Property that could be protected under other IP rights - e.g. patents, copyright (Check all boxes that apply):

- ☐ Do not want to disclose
- ☐ Cost of applying for patent or copyright
- ☐ Lack of eligibility

Draft Survey Questionnaire

- ☐ Time to obtain IP protection (patent, copyright, other)
- ☐ Limited lifecycle of trade secrets
- ☐ Other (Fill in blank space) \_\_\_\_\_
5. Do you licence trade secrets to third parties?
- ☐ Yes
- ☐ No. If no, why not?
- ☐ Strategic reasons
- ☐ No demand
- ☐ Fear of losing secret
- ☐ Other (Fill in blank space) \_\_\_\_\_
6. Do you acquire trade secrets from third parties?
- ☐ Yes
- ☐ No. If no, why not?
- ☐ Strategic reasons
- ☐ No offer
- ☐ Fear of not being the sole owner
- ☐ Other (Fill in blank space) \_\_\_\_\_
7. What types of precautions are employed by the company to protect trade secrets? (Check all boxes that apply)
- ☐ Employee confidentiality agreements
- ☐ Covenants-not-to-compete
- ☐ Computer controls over trade secret access
- ☐ Physical controls over trade secret access
- ☐ Limit employee access to trade secrets
- ☐ Payment wage *premia* to discourage key employee departure
- ☐ None
- ☐ Other (Fill in blank space) \_\_\_\_\_
8. Does the company apply different protection measures according to the different country that it trades in?
- ☐ Yes
- ☐ No
9. What controls do you deem most effective for TS protection? (Check all boxes that apply)

Employee confidentiality agreements	
Covenants-not-to-compete	
Computer controls over trade secret access	
Physical controls over trade secret access	
Limit employee access to trade secrets	

Payment wage <i>premia</i> to discourage key employee departure	
Other (Fill in blank space)	

10. Estimate the company's average annual expenditure to implement and maintain precautions to protect trade secrets: (Check box that applies): [To be completed]

- ☐ From \_\_\_ to \_\_\_ €  
☐ From \_\_\_ to \_\_\_ €  
☐ From \_\_\_ to \_\_\_ €  
☐ From \_\_\_ to \_\_\_ €

#### D. PROTECTION OF TRADE SECRETS

11. Who do you think could be interested in acquiring (by illegal means) your secret know-how?

- ☐ Current competitors  
☐ Current or past employees or business partners who intend to enter the market  
☐ Other (Fill in blank space) \_\_\_\_\_

12. What are the primary means by which competitor firms obtain information about products or services that incorporate your trade secrets?

- ☐ Informal information exchange  
☐ Purchase products and reverse engineer  
☐ Purchase services and reverse engineer  
☐ Public meetings and conferences  
☐ Hiring of your employees  
☐ Hiring of third party firms to acquire trade secrets through legal means  
☐ Hiring of third party firms to acquire trade secrets through illegal means  
☐ Partners in business ventures  
☐ Third party supplier relationships  
☐ Third party buyer relationships  
☐ Other (Fill in blank space) \_\_\_\_\_

13. Who could potentially steal your secret know-how?

- ☐ Employees  
☐ Hackers  
☐ Customers  
☐ Suppliers  
☐ Others, please specify

14. Did you take part in litigation involving trade secrets over the last three years?

- ☐ Yes  
☐ No



Draft Survey Questionnaire

If yes, check all boxes that apply:

- ☐ As defendant
- ☐ As plaintiff

15. Total amount spent on trade secret litigation over last three years: [To be completed]

- ☐ From \_\_\_ to \_\_\_ €
- ☐ From \_\_\_ to \_\_\_ €
- ☐ From \_\_\_ to \_\_\_ €
- ☐ From \_\_\_ to \_\_\_ €

16. Did your business experience unsuccessful attempts of misappropriation of secret know-how?

- ☐ Yes
- ☐ No

If yes, how many times in the last 10 years?

- ☐ From 1 to 5 times
- ☐ From 5 to 10 times
- ☐ More than 10 times

17. In case of suffering of trade secret unsuccessful attempts, this was carried out by:

- ☐ Employee
- ☐ Former employee
- ☐ Customer
- ☐ Client
- ☐ Unidentified party
- ☐ Others, please specify

18. Did your business experience successful attempts of misappropriation of secret know-how? If yes, how many times in the last 10 years?

19. In case of suffering of trade secret misappropriation, this was carried out by:

- ☐ Employee
- ☐ Former employee
- ☐ Customer
- ☐ Client
- ☐ Unidentified party
- ☐ Others, please specify

20. If you experienced misappropriation of the secret know-how, did you seek legal remedies?

☐ Yes

☐ No

21. If you did not, what was the reason?

- ☐ Fear of losing the secret
- ☐ Lack of evidence
- ☐ Litigation cost
- ☐ Inability to prove misappropriation
- ☐ Inability to prove damages suffered
- ☐ Inability to identify offender
- ☐ Lack of efficient legal remedies available
- ☐ Time for enforcement
- ☐ Others, please specify

22. If you sought legal remedies, were you able to get:

- ☐ Injunction
- ☐ Damages
- ☐ Seizure
- ☐ Others, please specify

23. Suppose your secret know-how were stolen, would you be able to quantify damages?

- ☐ Yes
- ☐ No. If no, why? (Fill in blank space) \_\_\_\_\_

24. Suppose your trade secrets were stolen. What do you think it would be a valuable legal remedies?

- ☐ Injunctions at national level
- ☐ Injunctions at EU level - at the custom
- ☐ Others, please specify \_\_\_\_\_

25. Is your company discouraged from using trade secrets in countries with a lower or inadequate level of protection than yours? If yes, what do you fear most?

- ☐ Disclosure/lost/misappropriation
- ☐ Monetary damages
- ☐ Impossibility of enforcement
- ☐ Others, please specify \_\_\_\_\_

26. Does your company support harmonization of trade secret laws among the EU Member States?

- ☐ Yes
- ☐ No

Draft Survey Questionnaire

27. If yes, what are the reasons why your company would support harmonization of trade secret laws among the EU Member States (Check all boxes that apply):

- ☐ Would reduce number forums where trade secrets cases must be litigated
- ☐ Would lower litigation costs
- ☐ Would lower cost of internal trade secret management programs
- ☐ Would provide uniformity of employee contract arrangements
- ☐ Others, please specify \_\_\_\_\_

28. Does your company support stronger trade secrets laws?

- ☐ Yes
- ☐ No

29. If yes, does your company support stronger penalties in the form of \_\_\_\_ (Check all boxes that apply):

- ☐ EU wide injunction
- ☐ Monetary penalties
- ☐ Punitive damages computed as multiples of actual damages
- ☐ Criminal sanctions
- ☐ Disgorgement of profits earned by parties found liable for misappropriation
- ☐ Others, please specify \_\_\_\_\_

30. In the box below, please write any additional comments that you would like to make

--

33



(GROW)

33

**From:** (MARKT)  
**Sent:** 21 May 2012 16:00  
**To:** 'Gaudino, Francesca'  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** RE: Trade Secret Project - First Interim Study - Third message  
**Attachments:** Interim Report - List of docs received.pdf

Dear Francesca

Thank you very much for the interim report.

I attach a list of the documents that we have received.

Best regards

EUROPEAN COMMISSION  
Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, B-1049 Brussels  
Tel. (+32) 22 5  
<mailto:> @ec.europa.eu

---

**From:** Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]  
**Sent:** Monday, May 21, 2012 1:55 PM  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study - Third message

Third message

---

**From:** Gaudino, Francesca  
**Sent:** Monday, May 21, 2012 01:52 PM  
**To:** @ec.europa.eu  
**Cc:** @ec.europa.eu; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study - First message  
**Importance:** High

Dear

Apparently the below message could not reach you for mailbox size limit reasons, so I will send you the documents with separate messages.

This is the first of 4 messages that will follow shortly.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1



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**From:** Gaudino, Francesca  
**Sent:** Monday, May 21, 2012 01:05 PM  
**To:** '@ec.europa.eu'  
**Cc:** '@ec.europa.eu'; de Martinis, Lorenzo  
**Subject:** Trade Secret Project - First Interim Study  
**Importance:** High

Dear

Please find attached the First Interim Study of the Trade Secret Project.

The documents are in pdf format, except for the legal summary charts - Appendices 4.I; 4.II and 4.III.

In case of need, we may send you the parts of the documents that are of your specific interest in word format.

We remain at your disposal for any clarification.

Best regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501















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33a

Name	Date modified	Type	Size
 Annex 7 - Topics of First Interim Study.pdf	21/05/2012 15:19	Adobe Acrobat D...	109 KB
 Appendix 1 - References.pdf	21/05/2012 15:16	Adobe Acrobat D...	376 KB
 Appendix 2 - Legal Matrices.pdf	21/05/2012 15:17	Adobe Acrobat D...	82 KB
 Appendix 3 - Country Specific Questionn...	21/05/2012 15:25	Adobe Acrobat D...	204 KB
 Appendix 3.I - Country Specific Question...	21/05/2012 15:25	Adobe Acrobat D...	4,431 KB
 Appendix 3.III - Country Specific Questio...	21/05/2012 15:25	Adobe Acrobat D...	1,900 KB
 Appendix 5 - Contributors.pdf	21/05/2012 15:23	Adobe Acrobat D...	44 KB
 Appendix 6 - Draft Survey Questionnaire....	21/05/2012 15:22	Adobe Acrobat D...	72 KB
 Copy of Appendix 4 I - IP Commercial L...	21/05/2012 15:23	Microsoft Excel 97...	140 KB
 Copy of Appendix 4 II - Competition La...	21/05/2012 15:22	Microsoft Excel 97...	127 KB
 Copy of Appendix 4 III - Criminal Law - S...	21/05/2012 15:24	Microsoft Excel 97...	109 KB
 Trade Secret Project - First Interim Study....	21/05/2012 15:18	Adobe Acrobat D...	3,286 KB





34



(GROW)

34

**From:** e (MARKT)  
**Sent:** 30 May 2012 17:48  
**To:** Gaudino, Francesca (Francesca.Gaudino@bakermckenzie.com)  
**Cc:** de Martinis, Lorenzo (Lorenzo.de.Martinis@bakermckenzie.com);  
(MARKT)  
**Subject:** Interim Report & Conference

Dear Francesca,

We need to schedule a meeting so that we can talk about the interim report before we send our observations.

Would it possible to set that meeting for 13 June?

I attach a more recent version of the programme. will help Prof. Luigi Alberto Franzoni in the debate on the methodology.

Regards



Internal  
version\_Progra...

**EUROPEAN COMMISSION**  
Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, B-1049 Brussels  
Tel. (+32) 22 96  
[mailto:](mailto:ec.europa.eu) [ec.europa.eu](http://ec.europa.eu)





# Conference (provisional programme)

## *Trade Secrets: Supporting Innovation Protecting know-how*

29 June 2012 Charlemagne Building, Rue de la Loi 170, 1000 Brussels

The conference, organised by DG Internal Market and Services, will address the pressing challenge of protecting European companies from acts of dishonest misappropriation of their know-how and other capital business information. The conference will look at the legal protection of trade secrets and confidential business information, the economic rationale behind it, as well as the role and importance of trade secrets for SMEs and innovative start-ups. At the same time informative and interactive, the Conference is expected to provide a fruitful dialogue with, and thus gather valuable input from, experts and stakeholders on the available policy options. It will also serve as a preparatory step in the launching of European wide survey to the industry on the topic.

**08:30 - 09:30** Registration and welcome coffee

**09:30 - 09:40** **OPENING SPEECH** by Jonathan Faull (*Director General, DG Internal Market and Services*)

**09:40 - 09:50** **TRADE SECRETS IN THE EU POLICY** by Jean Bergevin (*Head of Unit - Fight Against Counterfeiting and Piracy, DG Internal Market and Services*)

**09:50 - 10:30** **MISAPPROPRIATION OF CONFIDENTIAL BUSINESS INFORMATION - A CHALLENGE FOR COMPANIES IN THE EU?** By Alain Berger (*Alstom*), Patrick Schnber (*DuPont de Nemours*) and Patrick Ozoux (*Michelin*)

**10:30 - 10:45** **LEGAL FRAMEWORK IN THE EU** by Sarah Turner (*Hogan Lovells*)

**10:45 - 11:00** **TRADE SECRETS IN EU VERSUS JAPAN & USA** by Lorenzo de Martinis (*Baker & McKenzie*)

**11:00 - 11:15** **COFFEE BREAK**

**11:15-12:15** **ROUNDTABLE 1 - ENFORCING TRADE SECRETS AGAINST MISAPPROPRIATION**; moderated by Alexander von Mülendahl (*Bardehle Pagenberg*); with Dr. Björn Kalbfus (*Gleiss Lutz*); Lorenzo de Martinis (*Baker & McKenzie*); Robert Anderson (*Hogan Lovells*) further participants to be confirmed: Emmanuel Baud (*Jone Day*)

**12:15-12:45** **THE ECONOMICS OF TRADE SECRETS**, by Dr. Thomas S. Respass (*Baker & McKenzie*.)

**12:45 - 14:15** **LUNCH BREAK**

**14:15 - 15:15** **ROUNDTABLE 2 - TRADE SECRETS, INNOVATION AND COMPETITIVENESS** moderated by Allen N. Dixon (*IIPTC*), with Dr. Thomas S. Respass (*Baker & McKenzie*); Simon Cheetham (*China IPR SME Helpdesk*) further participants to be confirmed: Ruben Bonet, (*Fractus*)

**15:15-15:45** **SURVEYING THE INDUSTRY: PRESENTATION OF METHODOLOGY**, by Prof. Luigi Alberto Franzoni, (*University of Bologna*)

**15:45 - 16:30** **Debate**

**16:30 - 17:00** **CLOSING SPEECH: WHAT'S NEXT** by Jean Bergevin (*Head of Unit - Fight Against Counterfeiting and Piracy, DG Internal Market and Services*)



35





-----



(GROW)

35

**From:** (MARKT)  
**Sent:** 12 June 2012 10:33  
**To:** 'Francesca.Gaudino@bakermckenzie.com'; 'Lorenzo.de.Martinis@bakermckenzie.com'  
**Cc:** (MARKT); (MARKT);  
**Subject:** Draft first interim study - Trade secrets and confidential business information in the Internal Market - draft preliminary comments - preparation of the meeting of 15 June 2012

Dear Mr De Martinis, Dear Ms Gaudino,

In view of preparing our meeting of 15 June 2012 to discuss the draft first interim study on trade secrets and confidential business information in the Internal Market prepared by Baker & McKenzie, and on behalf of my colleague , please find attached our preliminary comments on that first interim study.



comments to  
interim report\_d...

May I underline that our comments are indeed preliminary and do not prejudice the formal comments that we may send you in accordance with the contract.

Kind regards,

-----  
European Commission  
Directorate General Internal Market and Services  
Unit D3 – Fight against counterfeiting and piracy  
1049 Brussels, Belgium  
office: SPA2 tel.: +32-2-29.1  
e-mail: @ec.europa.eu  
Find us on the web: [http://ec.europa.eu/internal\\_market](http://ec.europa.eu/internal_market)  
For information on EU rights: <http://ec.europa.eu/youreurope>

Have your say: [Debate on the Single Market Act](#)

-----  
The views expressed in this e-mail are my own and may not, under any circumstances, be interpreted as stating an official position of the European Commission.



**Document 35a : removed**



36



(GROW)

36

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 12 June 2012 11:49  
**To:** (MARKT)  
**Cc:** (MARKT); (MARKT); (MARKT);  
**Subject:** (MARKT); de Martinis, Lorenzo  
RE: Draft first interim study - Trade secrets and confidential business information in the Internal Market - draft preliminary comments - preparation of the meeting of 15 June 2012

Dear

Thanks very much for your preliminary comments, that we will duly consider.

Kind regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**From:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Sent:** Tuesday, June 12, 2012 10:33 AM  
**To:** Gaudino, Francesca; de Martinis, Lorenzo  
**Cc:** @ec.europa.eu; @ec.europa.eu; @ec.europa.eu  
**Subject:** Draft first interim study - Trade secrets and confidential business information in the Internal Market - draft preliminary comments - preparation of the meeting of 15 June 2012

Dear Mr De Martinis, Dear Ms Gaudino,

In view of preparing our meeting of 15 June 2012 to discuss the draft first interim study on trade secrets and confidential business information in the Internal Market prepared by Baker & McKenzie, and on behalf of my colleague please find attached our preliminary comments on that first interim study. May I underline that our comments are indeed preliminary and do not prejudice the formal comments that we may send you in accordance with the contract.

Kind regards,

---

European Commission  
Directorate General Internal Market and Services  
Unit D3 - Fight against counterfeiting and piracy  
1049 Brussels, Belgium  
office: SPA2 tel.: +32-2  
e-mail: @ec.europa.eu  
Find us on the web: [http://ec.europa.eu/internal\\_market](http://ec.europa.eu/internal_market)



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The views expressed in this e-mail are my own and may not, under any circumstances, be interpreted as stating an official position of the European Commission.

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37



GROW)

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**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 18 June 2012 13:06  
**To:** e (MARKT)  
**Cc:** (MARKT); de Martinis, Lorenzo; (MARKT); ...  
**Subject:** Trade Secrets Study - Commission's Review  
**Attachments:** Replies to Commission's Comments.doc

Dear

As agreed I am sending you our draft plan of actions to be undertaken to address the reviewers' comments. Please bear in mind that the document is just an initial draft aimed for our internal discussions only.

As to the conference among and the economists, Prof. Franzoni is currently travelling in and we can make it only next week, preferably on Monday morning. I would kindly ask Ms. to verify when is available next week.

As anticipated during the meeting, the legal team would like some clarifications, so I was wondering if you deem appropriate to have a conference call with them as well or if you think it would be enough to have some clarifications for the points highlighted in the attached document, considering that minor issues are concerned. We are available to proceed as you prefer.

Lastly, for the presentations of the speakers at the June 29 Conference, can you please confirm when you would need to have the presentations? If I recall it well the deadline should be this Friday (June 22), yet to be on the safe side your confirmation of the deadline would be much appreciated.

We will send you soon the communication on the revised timeline for the Project, as discussed in Brussels.

Looking forward to hearing from you.

Have a nice day,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**Document 37a : removed**



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**From:** (MARKT) on behalf of (MARKT)  
**Sent:** 22 June 2012 10:46  
**To:** (MARKT)  
**Subject:** FW: Observations on the 1st Interim Study - Trade Secrets

ARES 859955

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**From:** (MARKT)  
**Sent:** Wednesday, June 20, 2012 7:14 PM  
**To:** de Martinis, Lorenzo ([Lorenzo.de.Martinis@bakermckenzie.com](mailto:Lorenzo.de.Martinis@bakermckenzie.com))  
**Cc:** (MARKT); (MARKT); (MARKT)  
**Subject:** Observations on the 1st Interim Study - Trade Secrets

Dear Lorenzo

Please find attach the observations from the Commission on the 1<sup>st</sup> Interim Study.

Kind regards



Letter to Baker  
McKenzie.pdf



Comments on 1st  
Interim Report...

**EUROPEAN COMMISSION**  
Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, B-1049 Brussels  
Tel. (+32) 22 95 95 01  
<mailto:> @ec.europa.eu



(GROW)

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**From:** (MARKT)  
**Sent:** 20 June 2012 19:21  
**To:** Gaudino, Francesca (Francesca.Gaudino@bakermckenzie.com)  
**Subject:** Comments on the 1st Interim Report

Dear Francesca

I attach the final version of our comments that I have just sent to Lorenzo, but forgot to put you in copy (sorry).

I have proposed to ↵

REDACTED

I will continue to work on this – and we can maintain contact, perhaps even a conf call; but with the conference coming I just not find the time to so properly.

● Regards



Comments on 1st  
Interim Report...

**EUROPEAN COMMISSION**  
Internal Market and Services DG  
D3 - Fight against counterfeiting and piracy  
Rue de Spa 2, B-1049 Brussels  
Tel. (+32) 22  
[mailtc@ec.europa.eu](mailto:mailtc@ec.europa.eu)





**EUROPEAN COMMISSION**  
Directorate General Internal Market and Services  
**INTELLECTUAL PROPERTY**  
**Fight against counterfeiting and piracy**  
The Head of Unit

38a

20 JUN 2012

Brussels,  
MARKT/D3  
JN/na – ARES(2012) 859955

**Subject :       MARKT/2011/128/D**  
**Trade secrets and confidential business information in the Internal Market**  
**– First interim study**

Dear Mr Lorenzo de Martinis,

Thank you for the first interim report of 21 May 2012.

Please find attached our comments. They include a series of suggestions, concerns and reservations which normally would have to be addressed through a resubmission of the study before we could formally approve it.

REDACTED

Yours sincerely,

REDACTED

Mr Lorenzo de Martinis  
Principal  
Studio Professionale Associato a Baker & McKenzie  
Piazza Filippo Meda, 3

20121 Milan  
Italy



**Document 38b : removed**





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(GROW)

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**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 20 June 2012 19:37  
**To:** (MARKT)  
**Subject:** RE: Comments on the 1st Interim Report

Dear

Thank you very much for the document. I am on your same side in considering

REDACTED

I can imagine that the conference is keeping you very busy. If that is of consolation, it is the same from our side.

We remain of course available for a conference with you on the legal report in addition to that scheduled among and the economists.

Have a nice evening,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
Fax: + 39 02.76.231.501



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**From:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Sent:** Wednesday, June 20, 2012 07:21 PM  
**To:** Gaudino, Francesca  
**Subject:** Comments on the 1st Interim Report

Dear Francesca

I attach the final version of our comments that I have just sent to Lorenzo, but forgot to put you in copy (sorry).

I have proposed to

REDACTED

I will continue to work on this - and we can maintain contact, perhaps even a conf call; but with the conference coming I just not find the time to so properly.

Regards

**EUROPEAN COMMISSION**  
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**From:** de Martinis, Lorenzo <Lorenzo.de.Martinis@bakermckenzie.com>  
**Sent:** 20 June 2012 20:05  
**To:** (MARKT)  
**Cc:** (MARKT); (MARKT); (MARKT);  
**Subject:** RE: Observations on the 1st Interim Study - Trade Secrets

Dear

Thanks for your message.

We agree with your proposed course of action and confirm that we will fully deal with your observations in the second interim study, to be submitted by 21 July 2012.

Best regards

Lorenzo

Lorenzo de Martinis  
Partner  
Studio Professionale Associato a  
Baker & McKenzie  
Piazza Filippo Meda, 3  
20121 Milano MI - Italy  
Tel: +39 02 76231 334  
Fax: +39 02 76231 501



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**From:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Sent:** Wednesday, June 20, 2012 07:14 PM  
**To:** de Martinis, Lorenzo  
**Cc:** @ec.europa.eu; @ec.europa.eu; @ec.europa.eu  
**Subject:** Observations on the 1st Interim Study - Trade Secrets

Dear Lorenzo

Please find attach the observations from the Commission on the 1<sup>st</sup> Interim Study.

Kind regards

**EUROPEAN COMMISSION**  
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