B LIST
From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 16 October 2012 18:57
To: @ec.europa.eu
Cc: @ec.europa.eu; @ec.europa.eu; Respess, III, Thomas S.; de Martinis, Lorenzo; luigi.franzoni@unibo.it
Subject: RE: TRade Secrets Questionnaire
Attachments: Full Survey Questionnaire - October-DRAFT.doc

This time with the right attachment, please disregard the previous document.

Dear All,

Please find attached the revised survey questionnaire for discussion during our scheduled conference call.

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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Think twice and protect the environment, now.

From: @ec.europa.eu [mailto:@ec.europa.eu]
Sent: martedì 16 ottobre 2012 18:04
To: luigi.franzoni@unibo.it
Cc: @ec.europa.eu; @ec.europa.eu; Respess, III, Thomas S.; de Martinis, Lorenzo; Gaudino, Francesca; @ec.europa.eu
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Dear professor,

Thank you for your feedback.

Perhaps I should explain a bit why we proposed changes to part E.

1) Question 29/E1 in the Pilot Quest. presented two problems.
First, it did not allow the respondent for a clear "No reply" but went immediately into what should be the focus of legislation. Actually, the respondent may think that the Commission should not propose any legislation at all. This is important since the respondent may be under the impression that the Commission has already decided to propose legislation. We want to avoid giving this impression. This is why we proposed a new Question "E.i" on whether legislation should be desirable.

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- Reduction in the number of fora where TS cases may be litigated. This issue is dealt with by general civil procedure law (Rome I and II and Brussels I) and it is not going to change.
- Possibility of protecting TS effectively and efficiently in all MS: this is like "motherhood and apple pie", who is going to oppose?

So we thought it would be preferable to have a longer list of possible content of legislation, integrating bits that were previously in Q.29/E1, and avoid asking about the objectives as such. This is now Question "E.ii".

2) We tried to merge questions 30/E2 and 32/E4 into one on benefits/negative impacts. As we discussed with Francesca last week, there is no problem from our side in splitting it into two questions, one on benefits, one on negative impacts.

Now, turning to the concern you raise, I think we can be flexible. You are right in pointing out that it is important to know to what extent the respondent benefits himself from a particular action. At the same time, we also will need, in the impact assessment, to have information on "stakeholders' preferences" (an opinion poll, as you point out).

In this context, I note that only two of the four questions in the previous questionnaire were directly addressed at the benefits/negative effects on the company (E3 and E4). The first two were general.

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And, in any case, we have in mind to issue a different questionnaire addressed at business associations and other stakeholders, where we can ask more general issues.

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Full Survey Questionnaire

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

Purpose of the Survey

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 companies manage trade secrets and confidential business information, their perception on their importance as a competitive factor in the respective business, and their experience and views on legal protection and litigation. The aim is to understand whether the current legal framework is suited to ensure that competition is fair, and whether legal certainty and security in cross-border business activities can be improved in order to further encourage investment in research and development (R&D).

Confidential business information and Trade secrets

Companies often have information and know-how that they prefer to keep confidential (examples: list of clients, contractual terms with business partners, the launch of a new product, technology and know-how used in manufacturing, inventions that are not yet patent, etc.). Such information and know-how, which is not generally available or easily accessible to third parties (such as competitors), is important to the competitiveness and performance of the company that holds it. For the purpose of this survey such information and know-how will be referred to as "Confidential Business Information or Trade Secrets" and shortened to "CBI/TS".

While many companies avoid loss or leakage of CBI/TS through internal measures and safeguards, it is also common for a company to have the need or interest in sharing some of that important information with other companies or organisations under confidentiality agreements. The more valuable the information is, the more there is the risk that someone tries to access and copy the information is question and pass it to a competitor, or that someone with whom you have shared the information under certain contractual conditions, starts using it (or disclosing it to third parties) without your authorisation and in breach of contractual terms. In this survey such acts will be referred to as misappropriation, misuse or leakage of CBI/TS.

Companies throughout the internal market should be properly protected against the theft or misappropriation of CBI/TS. Innovative companies should be able to share, transfer or license CBI/TS throughout the European Union with reasonable safety in order to be able to cooperate with other organisations in R&D activities, capture financing for their projects or to collect royalties and profit from the results of their efforts.

This survey provides an opportunity for your business to improve the information available to the European Commission and to help ensuring that its policy decisions are based on accurate evidence. You can complete an online version of this form at [link]. We would be grateful if you could complete the Survey before [date]. For any query or to request detailed information on the survey, please contact us at: tradesecretstudy@bakermckenzie.com.

Thank you in advance for your participation in this Survey.
Structure of the Survey
The survey is composed of the following sections.

Section A – Your trade secrets
Section B – Threats to your trade secrets
Section C – Protection and misappropriation of your trade secrets
Section D – Litigation to protect and defend your trade secrets
Section E – Added value of any EU action in this area
Section F – Your Company
Section G – Additional information

Instructions for Completion
Please select the option or options where expressly specified that multiple choices are allowed - that best represent(s) 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 an enterprise group, please answer all further questions only in relation to the company for which you are responding. Do not include results for other subsidiaries or parent enterprises.

Information necessary to reply to the following questions may come from different areas of your company. The final response however should be coordinated typically by the General counsel (for large companies) or the CEO (for medium and small companies).

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

Before proceeding, please read the introduction on what are trade secrets and confidential business information and make sure you are familiar with these issues. If yes, please start answering the following questions. If not, please pass this questionnaire to someone else in your company who manages trade secrets and confidential business information. The ideal recipient in your company to answer the questionnaire would be the General Counsel, CEO, Chief IP Counsel, Head of R&D.

Thank you for your cooperation!
A.4 To what extent does your company rely on other intellectual property rights?

<table>
<thead>
<tr>
<th>Intellectual Property Rights</th>
<th>Low</th>
<th>Medium</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copyrights</td>
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<tr>
<td>Patents</td>
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<td>Trademarks</td>
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<tr>
<td>Designs</td>
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<td></td>
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<tr>
<td>Other</td>
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</tbody>
</table>

A.5 Reasons for your company to protect knowledge by means of TS/CBI vis-à-vis other intellectual property rights (patents, designs, or copyright) (Check all boxes that apply)

- Lack of eligibility for other IP right protection
- Does not want to disclose information
- Uncertainty on whether IP rights will be granted
- Other IP rights do not provide adequate protection
- Costs to obtain and manage other IP rights (fees, monitoring of infringements, litigation costs)
- Time to obtain other IP rights (patent or other)
- Knowledge in question has a short lifetime

A.6 Does your company share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements (e.g. know-how transfer; transfer or licensing of unpatented technology, services know-how, etc.)

- Yes regularly
- Yes occasionally
- Never

A.7 In cases where your company does not share TS/CBI with other parties, this is because:

- There is no demand for our know-how
- We fear to lose the confidentiality of the TS/CBI through misuse, leakage or further disclosure to other parties without our authorization
- For other strategic reasons.

Section B - Threats to your trade secrets

B.1 In your business sector, what are the primary means by which companies usually obtain information about products, services, strategies of the other market players? (Check all boxes that apply)

<table>
<thead>
<tr>
<th>Threats to Trade Secrets</th>
<th>Low</th>
<th>Medium</th>
<th>High</th>
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</thead>
<tbody>
<tr>
<td>Clients or Customers</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Suppliers of equipment, materials, services or software</td>
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<tr>
<td>Reverse engineering</td>
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<tr>
<td>Employees mobility</td>
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<tr>
<td>Conferences, trade fairs, exhibitions</td>
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<tr>
<td>Scientific journals and trade/technical publications</td>
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</tbody>
</table>
C.2 Did your company suffer attempts or acts of misappropriation of TS/CBI in the European Union during the last 10 years?

Within the EU
- None that we are aware of
- 1 to 5 times
- More than 5 times

Outside the EU
- None that we are aware of
- 1 to 5 times
- More than 5 times

If your company did not suffer attempts or acts of misappropriation please jump to question D5.

C.3 Attempts/acts to misappropriate TS/CBI of your company were carried out by: (Check all boxes that apply)
- Current Employees
- Former Employees
- Competitors
- Customers/clients
- Consultants/Internals
- Suppliers/business partners
- Regulatory agencies
- Others having access to the premises (cleaning companies, electrician, etc.)
- Other (please specify) __________

C.4 Please indicate one or more consequences suffered by your company as a result of the attempts and successful acts of misappropriation: (Check all boxes that apply)
- Loss of sales/clients/contracts
- Costs in internal investigation
- Costs in negotiating a settlement
- Costs in prosecuting and litigating
- Increase expenditure in preventive measures
- Other (please specify) __________

Section D – Litigation to protect and defend your trade secrets

D.1 If your company experienced misappropriation of TS/CBI during the past 10 years, did your company seek legal remedies in the EU?
- Yes, always
- Yes, but we did not suffer any
- Yes, we only litigated outside the EU
- No, never
- No concern

D.2 If your company sought legal remedies against misappropriation within the EU, was it able to get (Check all boxes that apply):
- Court orders stopping unlawful use of misappropriated trade secrets
- Court orders to search and seize evidence of misappropriation
- Award of damages or other monetary compensation
- Criminal sanctions against perpetrator
- Monetary fine for the company or organisation involved in acquiring or transmitting the trade secret
- Court orders for customs to seize goods at EU border
- Court order for destruction of goods that were manufactured using misappropriated trade secrets
- Publication of the Court decisions on the press/media
- None of the above

D.3 In case of litigation within the EU, if your company obtained an order from a national court to stop the use of misappropriated TS/CBI in the territory of that Member State, has your company tried to enforce this order in other Member States?
- Yes, always
- Yes, but we were not successful in all Member States where we tried
- No, we preferred to start separate legal actions in the other relevant Member States
- Other (please specify) __________

D.4 When your company decided not to seek legal remedies against misappropriation in the EU, what were the reasons? (Check all boxes that apply)
- Low value of the TS/CBI in question or of damages caused
- Initiating legal action would bring the case to the public arena and our company’s reputation and image could be damaged
- Preference for out-of-Court settlement
- Litigation costs
- Expected duration of litigation
- Lack of trust on the judicial system of the relevant Member State
- Fear of losing TS/CBI in the course of the court proceedings
- Inability to identify offender
- Difficulty in collection evidence to prove that the defendant misappropriated a TS/CBI
- Inability to quantify damages
- Low probability of collecting awarded damages
- Lack of effective legal remedies
- Other, please specify

D.5 Has your company experienced, as defendant, abusive litigation by a competitor trying to intimidate your company with a false accusation of misappropriation of TS/CBI in the past 10 years in the EU?
- Yes
- No
- Other, please specify
Section E - Added value of any EU action in this area

E.1 Should the European Commission propose EU legislation with a view to ensure that the national rules providing relief against the misappropriation of TS/CBI provide effective and equivalent protection across the EU?

- Yes,
- Yes, as long as it does not lower the level of protection of TS/CBI in countries where my company is seated or operates
- No
- No opinion

E.2. In your view, EU legislation on trade secrets should cover the following (Check all boxes that apply)

- Definition of what is a TS/CBI to be protected against misappropriation;
- Prohibition of acts of misappropriation and misuse of TS/CBI and a definition of such acts;
- National court orders to stop the unlawful use of the misappropriated TS/CBI in the whole of the EU;
- National court orders requiring all customs authorities in the EU to stop at the EU borders imports of products manufactured using misappropriated TS/CBI;
- Rules on the calculation of damages, allowing for taking into account all relevant factors (lost sales, unjustified profits by the defendant, royalties, etc.);
- Uniform contractual rules on non-compete and/or non-disclosure clauses between the trade secret owner and employees;
- Rules ensuring that the confidentiality of the trade secret is kept during court proceedings and hearings, so that the TS is not lost or further disclosed in the course of legal actions;
- Rules on criminal penalties and/or fines for individuals and organisations responsible for misappropriation of trade secrets;
- Other (fill in)
- Other (fill in)

E.3 What impacts, if any, could you expect from an EU legislative proposal on trade secrets? (Check all boxes that apply)

Benefits:
- Trade secrets would be safer;
- Better business environment for investment in innovation by providing better assurance that investment can be recuperated;
- More investment in R&D and innovation;
- Greater security in business transactions (agreements, collaborations) involving sharing/transfer of CBI/Ts with another partner in a different EU Member State (and therefore more willingness to share or transfer CBI/Ts under confidential clauses to another partner in a different EU Member State);
- More possibilities of getting returns from sharing, licensing or transferring know-how;
- Lower transaction costs relating to contracts and agreements involving know-how transfer and licensing when operating in multiple Member States;
- Better conditions for network innovation (that is, with cooperation from different players) as opposed to in-house R&D only;
- Better conditions to access funding and venture capital;
- Easier enforcement of a national court order in other EU Member States;
- Reduction in litigation costs
- Other: ________

(b) No perceived benefits

(c) Possible negative impacts:
- Increased risk of anticompetitive behaviour by the holders of trade secrets
- Duplication of costs in R&D due to secrecy
- Less labour mobility;
- Innovation would be impaired;
- More barriers to market entry;
- Other, specify_____________________________________

(d) No perceived negative impacts: ________
Section F – Your Company

F.1 Your company name. Names of companies will be kept strictly confidential.

F.2 Is your company part of a multinational group?
   o Yes   o No

F.3 Your country (from computer list).

F.4 Principal economic activity of your company (from computer list):
   1. Manufacturing: Textiles
   2. Manufacturing: Chemicals and chemical
   3. Manufacturing: Basic pharmaceutical
   4. Manufacturing: Computer, electronic, optical
   5. Manufacturing: Machinery and equipment
   6. Manufacturing: Motor vehicles
   7. Electricity, gas steam and air conditioning supply
   8. Water supply; sewage, waste management and remediation activities
   9. Publishing activities
   10. Telecommunications
   11. Fast moving consumer goods
   12. Computer programming, consultancy and related activities
   13. Financial and insurance activities
   14. Scientific research and development
   15. Legal and accounting activities
   16. Biotech
   17. Wholesale trade
   18. Retail trade
   19. Other (fill in)

F.5 Is your business market characterized by products/services or process with a short lifecycle (less than 2 years)?
   o Yes   o No

F.6 Please estimate your company’s total turnover for the year 2011 – in millions of Euros and excluding VAT
   € ______

F.7 Please estimate your company’s average number of employees for the year 2011
   ______

Section G – Additional Information

G.1 In the box below, please write any additional comments that you would like to make. Feel free to relate cases in which your company has been confronted with trade secrets/confidential business information misappropriation, also providing estimates of costs of litigation to protect trade secrets/confidential business information and damages suffered as a consequence of misappropriation of trade secrets/confidential business information. If you wish to provide further information in the course of a conversation or an interview, please specify your contact details so that we can keep in touch.

Name of respondent: ______. Names of respondents will be kept strictly confidential.

Position in the company: ______.

E-mail address (optional): ______.

Thank you for taking the time to complete this survey.
Dear

The questions in red are those revised (i.e. they differ from what you have suggested). Together with the policy questions, these will presumably be the only ones we will need to talk about tomorrow. Sorry about this, I forgot to tell Francesca.

Yours, Luigi

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Dear

Prof. Franzoni revised the final version of the questionnaire and I assume the different color is just a matter of formatting.

Kind regards,

Francesca

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Dear Francesca,

A short and direct question: why are some questions in red? Do you want to delete them?

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Dear All,

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From: Luigi Alberto Franzoni [mailto:luigi.franzoni@unibo.it]
Sent: Tuesday, October 16, 2012 3:03 PM
To: MARKT
Cc: (MARKT); (MARKT); (MARKT); thomas.respess@bakermckenzie.com; Lorenzo.de.Martinis@bakermckenzie.com; Gaudino, Francesca; (MARKT)
Subject: Trade Secrets Questionnaire

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Thanks.

Having your considerations included in the document will ease the discussion.

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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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The purpose of this survey, which is part of the project, is to collect information on how companies manage trade secrets and confidential business information, their perception on their importance as a competitive factor in the respective business, and their experience and views on legal protection and litigation. The aim is to understand whether the current legal framework is suited to ensure that competition is fair, and whether legal certainty and security in cross-border business activities can be improved in order to further encourage investment in research and development (R&D).

Confidential business information and Trade secrets
Companies often have information and know-how that they prefer to keep confidential (examples: list of clients, contractual terms with business partners, the launch of a new product, technology and know-how used in manufacturing, inventions that are not yet patent, etc.). Such information and know-how, which is not generally available or easily accessible to third parties (such as competitors), is important to the competitiveness and performance of the company that holds it. For the purpose of this survey such information and know-how will be referred to as "confidential business information or trade secrets" and shortened to "CBI/TS".

While many companies avoid loss or leakage of CBI/TS through internal measures and safeguards, it is also common for a company to have the need or interest in sharing some of that important information with other companies or organisations under confidentiality agreements. The more valuable the information is, the more there is the risk that someone tries to access and copy the information is question and pass it to a competitor, or that someone with whom you have shared the information under certain contractual conditions, starts using it (or disclosing it to third parties) without your authorisation and in breach of contractual terms. In this survey such acts will be referred to as misappropriation, misuse or leakage of CBI/TS.

Companies throughout the internal market should be properly protected against the theft or misappropriation of CBI/TS. Innovative companies should be able to share, transfer or license CBI/TS throughout the European Union with reasonable safety in order to be able to cooperate with other organisations in R&D activities, capture financing for their projects or to collect royalties and profit from the results of their efforts.

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Thank you in advance for your participation in this Survey.
Structure of the Survey
The survey is composed of the following sections.

Section A - Your trade secrets
Section B - Threats to your trade secrets
Section C - Protection and misappropriation of your trade secrets
Section D - Litigation to protect and defend your trade secrets
Section E - Added value of any EU action in this area
Section F - Your Company
Section G - Additional information

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

Before proceeding, please read the introduction on what are trade secrets and confidential business information and make sure you are familiar with these issues. If yes, please start answering the following questions. If not, please pass this questionnaire to someone else in your company who manages trade secrets and confidential business information. The ideal recipient in your company to answer the questionnaire would be the General Counsel, CEO, Chief IP Counsel, Head of R&D.

Thank you for your cooperation!
Section A - Your Trade Secrets

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

A.1 Does your company have technical or commercial information related to its activity which it considers important to its competitiveness and which it keeps confidential?

- Yes
- No (Please jump to question F.1)

A.2 Please rank the value of TS/CBI to your company in the following areas: (Check all boxes that apply)

**Technical information**
- R&D data (projects, results, etc.)
  - Low
  - Medium
  - High
- Process know-how and technology (manufacturing processes, software, devices, plants design)
  - Low
  - Medium
  - High
- Formulae and recipes
  - Low
  - Medium
  - High
- Product technology
  - Low
  - Medium
  - High

**Business information**
- Customer or suppliers lists and associated data (satisfaction surveys, customer profiling, etc.)
  - Low
  - Medium
  - High
- Commercial bids and contracts, contractual terms
  - Low
  - Medium
  - High
- Marketing data and planning (advertising, market surveys, sales figures and forecast)
  - Low
  - Medium
  - High

8. Financial information & business planning
- Low
- Medium
- High

9. Other technical / business data (indicate):
- Low
- Medium
- High

A.3 Please rank the importance of TS/CBI for the competitiveness/innovative growth performance of your company:
- N/A
- Low
- Medium
- High
A.4 To what extent does your company rely on other intellectual property rights?

- Copyrights: [ ] Low [ ] Medium [ ] High
- Patents: [ ] Low [ ] Medium [ ] High
- Trademarks: [ ] Low [ ] Medium [ ] High
- Designs: [ ] Low [ ] Medium [ ] High
- Other: [ ] Low [ ] Medium [ ] High

A.5 Reasons for your company to protect knowledge by means of TS/CBI vis-à-vis other intellectual property rights (patents, designs or copyright)

(Choose all boxes that apply)

- Lack of eligibility for other IP right protection
- Does not want to disclose information
- Uncertainty on whether IP rights will be granted
- Other IP rights do not provide adequate protection
- Costs to obtain and manage other IP rights (fees, monitoring of infringements, litigation costs)
- Time to obtain other IP rights (patent or other)
- Knowledge in question has a short lifetime

A.6 Does your company share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements (e.g. know-how transfer; transfer or licensing of unpatented technology, services know-how, etc.)

- Yes regularly
- Yes occasionally
- Never

A.7 In cases where your company does not share TS/CBI with other parties, this is because:

(Choose all boxes that apply)

- There is no demand for our know-how
- We fear to lose the confidentiality of the TS/CBI through misuse, leakage or further disclosure to other parties without our authorization
- For other strategic reasons.

Section B - Threats to your trade secrets

B.1 In your business sector, what are the primary means by which companies usually obtain information about products, services, strategies of the other market players? (Choose all boxes that apply)

- Clients or customers: [ ] Low [ ] Medium [ ] High
- Suppliers of equipment, materials, services or software: [ ] Low [ ] Medium [ ] High
- Reverse engineering: [ ] Low [ ] Medium [ ] High
- Employees mobility: [ ] Low [ ] Medium [ ] High
- Conferences, trade fairs, exhibitions: [ ] Low [ ] Medium [ ] High
- Scientific journals and trade/technical publications: [ ] Low [ ] Medium [ ] High
B.2 To what extent do the following actors pose a risk of unauthorized access, disclosure, use or leakage of the TS/DBI of your company? (Check all boxes that apply)

- Current Employees
- Former Employees
- Competitors
- Customers/clients
- Consultants/internals
- Suppliers/business partners
- Regulatory agencies
- Others having access to the premises (cleaning companies, electrician, etc.)
- Other (please specify)

B.3 Does your company believe that the risk of exposure to TS/CBI misappropriation has increased over the last 10 years?

- Yes, significantly
- Yes, moderately
- No
- Do not know/no opinion

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Section C - Protection and misappropriation of your trade secrets

C.1 If your company is present or trades in more than one EU country, does your company apply different TS/CBI protection measures, such as confidentiality agreements, non-compete covenants, physical restrictions to access, depending on the country in question?

- Yes
- No
- No opinion
- Not concerned

---

**Comment [MFS5]:** Should we add an option to reply that the risk has decreased?

**Comment [MFS6]:** In question C4 they are referred as “preventive measures”. We need to use the same expression in both questions.

**Comment [MFS7]:** It may be good to add a couple of examples on what we should understand by “protection/preventive measures” (e.g., confidentiality agreements, non-compete covenants, physical restrictions to access, etc.). In the pilot questionnaire there was a previous question listing them.
C.2 Did your company suffer attempts or acts of misappropriation of TS/CBI in the European Union during the last 10 years?

Within the EU
- None that we are aware of
- 1 to 5 times
- More than 5 times

Outside the EU
- None that we are aware of
- 1 to 5 times
- More than 5 times

If your company did not suffer attempts or acts of misappropriation please jump to question D5.

C.3 Attempts/acts to misappropriate TS/CBI of your company were carried out by: (Check all boxes that apply)
- Current Employees
- Former Employees
- Competitors
- Customers/clients
- Consultants/internals
- Suppliers/business partners
- Regulatory agencies
- Others having access to the premises (cleaning companies, electrician, etc.)
- Other (please specify)

C.4 Please indicate one or more consequences suffered by your company as a result of the attempts and successful acts of misappropriation: (Check all boxes that apply)
- Loss of sales/clients/contracts
- Costs in internal investigation
- Costs in negotiating a settlement
- Costs in prosecuting and litigating
- Increase expenditure in preventive measures
- Other (please specify)

Section D - Litigation before courts in the EU to protect and defend your trade secrets

D.1 If your company experienced misappropriation of TS/CBI during the past 10 years, did your company seek legal remedies before courts located in the EU?
- Yes, always
- Yes, but only in some cases
- No, we only litigated in courts outside the EU
- No, never
- Not concerned
D.2 If your company sought legal remedies against misappropriation within the EU, was it able to get (Check all boxes that apply):

- Court orders stopping unlawful use of misappropriated trade secrets
- Court orders to search and secure evidence of misappropriation
- Award of damages or other monetary compensation
- Criminal sanctions against perpetrator
- Monetary fine for the company or organisation involved in acquiring or transmitting the trade secret
- Court order for customs to seize goods at EU border
- Court order for destruction of goods that were manufactured using misappropriated trade secrets
- Publication of the Court decisions on the press/media
- None of the above

D.3 In case of litigation within the EU, if your company obtained an order from a national court to stop the use of misappropriated TS/CBI in the territory of that Member State, has your company tried to enforce this order in other Member States?

- Yes, and we were successful in all Member States where we tried
- Yes, but we were not successful in all Member States where we tried
- No, we preferred to start separate legal actions in other relevant Member States
- No, it was too costly to seek legal protection in other Member States
- No, because of the uncertainty of the result in other Member States
- No, there was no need because our case(s) only concerned one Member State
- Other, (Please specify) ________________

D.4 When your company decided not to seek legal remedies against misappropriation in the EU, what were the reasons? (Check all boxes that apply)

- Low value of the TS/CBI in question or of damages caused
- Initiating legal action would bring the case to the public arena and our company’s reputation and image could be damaged
- Preference for out-of-Court settlement
- Litigation costs
- Expected duration of litigation
- Lack of trust on the judicial system of the relevant Member State
- Fear of losing TS/CBI in the course of the court proceedings
- Inability to identify offender
- Difficulty in collection evidence to prove that the defendant misappropriated a TS/CBI
- Inability to quantify damages
- Low probability of collecting awarded damages
- Lack of effective legal remedies
- Other, please specify

D.5 Has your company experienced, as defendant, abusive litigation by a competitor trying to intimidate your company with a false accusation of misappropriation of TS/CBI in the past 10 years?

In the EU
Section E – Added value of any EU action in this area

E.1 Should the European Commission propose EU legislation with a view to ensure that the national rules providing relief against the misappropriation of TS/CBI provide effective and equivalent protection across the EU?

- Yes,
- Yes, as long as it does not lower the level of protection of TS/CBI in countries where my company is seated or operates
- No
- No opinion

E.2. In your view, EU legislation on trade secrets should cover the following [*Alternative formulation*: *Would your company benefit from EU legislation establishing common rules on the following?*] (Check all boxes that apply)

- Definition of Clarifying what is a TS/CBI to be protected against misappropriation across the EU;
- Prohibition of acts of misappropriation and misuse of TS/CBI and a definition of such acts;
- National court orders to stop the unlawful use of the misappropriated TS/CBI in the whole of the EU;
- National court orders requiring all customs authorities in the EU to stop at the EU borders imports of products manufactured using misappropriated TS/CBI;
- Rules on the calculation of damages, allowing for taking into account all relevant factors (lost sales, unjustified profits by the defendant, royalties, etc.);
- Uniform contractual rules on non-compete and/or non-disclosure clauses between the trade secret owner and employees;
- Rules ensuring that the confidentiality of the trade secret is kept during court proceedings and hearings, so that the TS is not lost or further disclosed in the course of legal actions;
- Rules on criminal penalties and/or fines for individuals and organisations responsible for misappropriation of trade secrets;
E.3 What impacts, if any, could you expect from an EU legislative proposal on trade secrets? [Alternative formulation, to be discussed: Which would be the positive or negative impacts of possible EU common rules on the protection or trade secrets from misappropriation for your company?] (Check all boxes that apply)

Benefits [Alternative: Benefits for your company]:

- Trade secrets would be safer; [Alternative: Your trade secrets would be safer]
- Better business environment for investment in innovation by providing better assurance that investment can be recuperated; [Alternative: it will be easier for your company to recuperate the investments made in R&D and Innovation]
- More investment in R&D and innovation; [Alternative: your company would be more inclined to invest in R&D and innovation because of the safer business environment for our trade secrets]
- Greater security in business transactions (agreements, collaborations) involving sharing/transferring/licensing of CBI/TS with another partner in a different EU Member State and therefore more willingness to share or transfer CBI/TS under confidential clauses to another partner in a different EU Member State; [Alternative: greater legal certainty/security for the business transactions (agreements, collaborations) with other partners in a different EU Member State which involve sharing/transferring/licensing of CBI/TS]
- More possibilities of getting returns from sharing, licensing or transferring know-how; [Alternative: it will be easier for your company to get returns from sharing, licensing or transferring know-how]
- Lower transaction costs relating to contracts and agreements involving know-how transfer and licensing when operating in multiple Member States; [Alternative: Lower transaction costs for the contracts/agreements involving sharing, licensing or transfer of know-how when your company operates in multiple Member States]
- Better conditions for network innovation (that is, with cooperation from different players) as opposed to in-house R&D only; [Alternative: your company will be more inclined to cooperate with other players for R&D and innovation purposes ("network/collaborative innovation" as opposed to carrying out in-house R&D only)]
- Better conditions to access funding and venture capital; [Alternative: your company will have better conditions to access funding and venture capital as our trade secrets will be better protected]
- Your company will need to spend less resources in adopting company-specific preventive measures to protect trade secrets
- It will be easier for your company to adopt EU-wide optimized business plans to protect your trade secrets instead of country-specific business plans
• More legal certainty and predictability of results when litigating in other EU Member States to protect your trade secrets; Easier enforcement of a national court order in other EU Member States;
• Reduction in litigation costs
• Likely deterrent effect of the rules, so less litigation will be necessary
• Other: __________

(b) No perceived benefits [Alternative: no perceived benefits for your company]

(c) Possible negative impacts [Alternative: possible negative impacts on your company]:

• Increased risk of anticompetitive behaviour by the holders of trade secrets [Alternative: Other holders of trade secrets could try to raise market barriers by carrying out anticompetitive behavior, including abusive/intimidating litigation]
• Duplication of costs in R&D due to secrecy [alternative: it will be more difficult to access to others' innovation, so your company is likely to waste efforts duplicating research in R&D]
• Less labour mobility; [alternative: It will be more difficult for your company to recruit talented employees from other companies]
• Innovation would be impaired;[alternative: it will be more difficult to access to others' innovation, so your company will not be able to carry out incremental innovation] [N.B. in terms of other, this reply option would need to follow the second bullet]
• More barriers to market entry;[alternative: delete (e.g. integrated in the first bullet point)]
• Other, specify________________________________________

(d) No perceived negative impacts: __________ [Alternative: No perceived negative impacts on my company]

(e) No opinion

Section F – Your Company

F.1 Your company name. Names of companies will be kept strictly confidential

F.2 Is your company part of a multinational group?
F.3 Your country (from computer list)

F.4 Principal economic activity of your company (from computer list):

1. Manufacturing: Textiles
2. Manufacturing: Chemicals and chemical
3. Manufacturing: Basic pharmaceutical
4. Manufacturing: Computer, electronic, optical
5. Manufacturing: Machinery and equipment
6. Manufacturing: Motor vehicles
7. Electricity, gas steam and air conditioning supply
8. Water supply; sewerage, waste management and remediation activities
9. Publishing activities
10. Telecommunications
11. Fast moving consumer goods
12. Computer programming, consultancy and related activities
13. Financial and insurance activities
14. Scientific research and development
15. Legal and accounting activities
16. Biotech
17. Wholesale trade
18. Retail trade
19. Other ______ (fill in)

F.5 Is your business market characterized by products/services or process with a short lifecycle (less than 2 years)?

□ Yes    □ No

F.6 Please estimate your company's total turnover for the year 2011 - in millions of Euros and excluding VAT

€ ______

Comment [MFS17]: Will you allow for multiple replies?

F.7 Please estimate your company's average number of employees for the year 2011 ______

Comment [MFS18]: We suggested in our previous comments to have "ranges" for replies. We still think it is preferable.

F.8 With respect to Research & Development (R&D) activities, rank in level internal R&D ______ activities and acquisition of external R&D ______

□ Little □ Medium □ High

□ Little □ Medium □ High

Section G - Additional information

G.1 In the box below, please write any additional comments that you would like to make. Feel free to relate cases in which your company has been confronted with trade
secrets/confidential business information misappropriation, also providing estimates of costs of litigation to protect trade secrets/confidential business information and damages suffered as a consequence of misappropriation of trade secrets/confidential business information. If you wish to provide further information in the course of a conversation or an interview, please specify your contact details so that we can keep in touch.

Name of respondent: 

Names of respondents will be kept strictly confidential

Position in the company: 

E-mail address (optional):

Thank you for taking the time to complete this survey.
76quater
Dear Francesca, dear Professor,

Following our phone call, see attached the draft questionnaire with some changes in question E.3. As discussed, we quickly tried to reduce the number of possible replies and avoid overlaps.

The proposed reply options are in yellow. The numbers in square brackets refer to our suggested order for the replies, both as regards the possible benefits (8 in total, including the "other" option) and the possible negative effects (5 in total, including the "other" option).

If you have questions, please do not hesitate to contact us.

Regards,

P.S. we did not touch on any of the other questions since we understand you will implement the changes.

---

Dear all,

I have gone through the revised draft questionnaire, as sent by Francesca yesterday. I have found a few issues that would possibly need clarification. I thought that, in order to make the phone call more efficient, it would be preferable that you have a written text in front of you with those issues highlighted.

Also, I added alternative language for questions E2 and E3 following the exchanges we had yesterday. I do not know if the alternative language reflects the ideas put forward by Prof. Franzoni. In any case, we need to discuss this tomorrow.

Regards,
This time with the right attachment, please disregard the previous document.

From: Gaudino, Francesca  
Sent: martedì 16 ottobre 2012 18:57  
To: Sec.europa.eu  
Cc: )ec.europa.eu: Шес.еигора.еи: aec.europa.eu: Respess, III, Thomas S.; de Martinis, Lorenzo; @ec.europa.eu: luigifranzioni@unibo.it  
Subject: RE: TRade Secrets Questionnaire  

Dear All,

Please find attached the revised survey questionnaire for discussion during our scheduled conference call.

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  
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Do you really need to print this e-mail?  
Think twice and protect the environment, now.
Full Survey Questionnaire

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

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

Before proceeding, please read the introduction on what are trade secrets and confidential business information and make sure you are familiar with these issues. If yes, please start answering the following questions. If not, please pass this questionnaire to someone else in your company who manages trade secrets and confidential business information. The ideal recipient in your company to answer the questionnaire would be the General Counsel, CEO, Chief IP Counsel, Head of R&D.

Thank you for your cooperation!
Section A - Your Trade Secrets

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A.1 Does your company have technical or commercial information related to its activity which it considers important to its competitiveness and which it keeps confidential?

- Yes
- No (Please jump to question F.1)

A.2 Please rank the value of TS/CBI to your company in the following areas: (Check all boxes that apply)

**Technical information**
- R&D data (projects, results, etc.)
  - Low
  - Medium
  - High
- Process know-how and technology (manufacturing processes, software, devices, plants design)
  - Low
  - Medium
  - High
- Formulae and recipes
  - Low
  - Medium
  - High
- Product technology
  - Low
  - Medium
  - High

**Business information**
- Costumer or suppliers lists and associated data (satisfaction surveys, customer profiling, etc.)
  - Low
  - Medium
  - High
- Commercial bids and contracts, contractual terms
  - Low
  - Medium
  - High
- Marketing data and planning (advertising, market surveys, sales figures and forecast)
  - Low
  - Medium
  - High

8. Financial information & business planning
- Low
- Medium
- High

9. Other technical / business data (indicate):
- Low
- Medium
- High

A.3 Please rank the importance of TS/CSI for the competitiveness/innovative growth performance of your company:

- N/A
- Low
- Medium
- High
A.4 To what extent does your company rely on other intellectual property rights?

- Copyrights: Low • Medium • High
- Patents: Low • Medium • High
- Trademarks: Low • Medium • High
- Designs: Low • Medium • High
- Other: Low • Medium • High

A.5 Reasons for your company to protect knowledge by means of TS/CBI vis-à-vis other intellectual property rights (patents, designs or copyright)

- Lack of eligibility for other IP right protection
- Does not want to disclose information
- Uncertainty on whether IP rights will be granted
- Other IP rights do not provide adequate protection
- Costs to obtain and manage other IP rights (fees, monitoring of infringements, litigation costs)
- Time to obtain other IP rights (patent or other)
- Knowledge in question has a short lifetime

A.6 Does your company share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements (e.g. know-how transfer; transfer or licensing of unpatented technology, services know-how, etc.)

- Yes regularly
- Yes occasionally
- Never

A.7 In cases where your company does not share TS/CBI with other parties, this is because:

- There is no demand for our know-how
- We fear to lose the confidentiality of the TC/CBI through misuse, leakage or further disclosure to other parties without our authorization
- For other strategic reasons.

Section B – Threats to your trade secrets

B.1 In your business sector, what are the primary means by which companies usually obtain information about products, services, strategies of the other market players? (Check all boxes that apply)

- Clients or customers: Low • Medium • High
- Suppliers of equipment, materials, services or software: Low • Medium • High
- Reverse engineering: Low • Medium • High
- Employees mobility: Low • Medium • High
- Conferences, trade fairs, exhibitions: Low • Medium • High
- Scientific journals and trade/technical publications: Low • Medium • High
B.2 To what extent do the following actors pose a risk of unauthorized access, disclosure, use or leakage of the TS/DBI of your company? (Check all boxes that apply)

- Current Employees
- Former Employees
- Competitors
- Customers/clients
- Consultants/internals
- Suppliers/business partners
- Regulatory agencies
- Others having access to the premises (cleaning companies, electrician, etc.)
- Other (please specify)

- Low
- Medium
- High

B.3 Does your company believe that the risk of exposure to TS/CBI misappropriation has increased over the last 10 years?

- Yes, significantly
- Yes, moderately
- No
- Do not know/no opinion

Section C - Protection and misappropriation of your trade secrets

C.1 If your company is present or trades in more than one EU country, does your company apply different TS/CBI protection measures, such as depending on the country in question?

- Yes
- No
- No opinion
- Not concerned

Comment [MF55]: Should we add an option to apply that the risk has decreased?

Comment [MF56]: In question C4 they are referred as "preventive measures". We need to use the same expression in both questions.

Comment [MF57]: It may be good to add a couple of examples on what we should understand by "protection/preventive measures" (e.g. confidentiality agreements, non-compete covenants, physical restrictions to access, etc.). In the pilot questionnaire there was a previous question asking them...
C.2 Did your company suffer attempts or acts of misappropriation of TS/CBI in the European Union during the last 10 years?

Within the EU
- None that we are aware of
- 1 to 5 times
- More than 5 times

Outside the EU
- None that we are aware of
- 1 to 5 times
- More than 5 times

If your company did not suffer attempts or acts of misappropriation please jump to question D5.

C.3 Attempts/acts to misappropriate TS/CBI of your company were carried out by: (Check all boxes that apply)
- Current Employees
- Former Employees
- Competitors
- Customers/clients
- Consultants/internals
- Suppliers/business partners
- Regulatory agencies
- Others having access to the premises (cleaning companies, electrician, etc.)
- Other (please specify)

C.4 Please indicate one or more consequences suffered by your company as a result of the attempts and successful acts of misappropriation: (Check all boxes that apply)
- Loss of sales/clients/contracts
- Costs in internal investigation
- Costs in negotiating a settlement
- Costs in prosecuting and litigating
- Increase expenditure in preventive measures
- Other (please specify)

Section D - Litigation before courts in the EU to protect and defend your trade secrets

D.1 If your company experienced misappropriation of TS/CBI during the past 10 years, did your company seek legal remedies before courts located in the EU?

- Yes, always
- Yes, but only in some cases
- No, we only litigated in courts outside the EU
- No, never
- Not concerned
D.2 If your company sought legal remedies against misappropriation within the EU, was it able to get (Check all boxes that apply):

- Court orders stopping unlawful use of misappropriated trade secrets
- Court orders to search and secure evidence of misappropriation
- Award of damages or other monetary compensation
- Criminal sanctions against perpetrator
- Monetary fine for the company or organisation involved in acquiring or transmitting the trade secret
- Court order for customs to seize goods at EU border
- Court order for destruction of goods that were manufactured using misappropriated trade secrets
- Publication of the Court decisions on the press/media
- None of the above

D.3 In case of litigation within the EU, if your company obtained an order from a national court to stop the use of misappropriated TS/CBI in the territory of that Member State, has your company tried to enforce this order in other Member States?

- Yes, and we were successful in all Member States where we tried
- Yes, but we were not successful in all Member States where we tried
- No, we preferred to start separate legal actions in the other relevant Member States
- No, it was too costly to seek legal protection in other Member States
- No, because of the uncertainty of the result in other Member States
- No, there was no need because our case(s) only concerned one Member State
- Other, (Please specify) __________

D.4 When your company decided not to seek legal remedies against misappropriation in the EU, what were the reasons? (Check all boxes that apply)

- Low value of the TS/CBI in question or of damages caused
- Initiating legal action would bring the case to the public arena and our company’s reputation and image could be damaged
- Preference for out-of-Court settlement
- Litigation costs
- Expected duration of litigation
- Lack of trust on the judicial system of the relevant Member State
- Fear of losing TS/CBI in the course of the court proceedings
- Inability to identify offender
- Difficulty in collection evidence to prove that the defendant misappropriated a TS/CBI
- Inability to quantify damages
- Low probability of collecting awarded damages
- Lack of effective legal remedies
- Other, please specify

D.5 Has your company experienced, as defendant, abusive litigation by a competitor trying to intimidate your company with a false accusation of misappropriation of TS/CBI in the past 10 years?

In the EU
Section E - Added value of any EU action in this area

E.1 Should the European Commission propose EU legislation with a view to ensure that the national rules providing relief against the misappropriation of TS/CBI provide effective and equivalent protection across the EU?

- Yes
- Yes, as long as it does not lower the level of protection of TS/CBI in countries where my company is seated or operates
- No
- No opinion

E.2. In your view, EU legislation on trade secrets should cover the following (Alternative formulation, to be discussed: Would your company benefit from EU legislation establishing common rules on the following?) (Check all boxes that apply)

- Definition of clarifying what is a TS/CBI to be protected against misappropriation across the EU;

- Prohibition of acts of misappropriation and misuse of TS/CBI and a definition of such acts;

- National court orders to stop the unlawful use of the misappropriated TS/CBI in the whole of the EU;

- National court orders requiring all customs authorities in the EU to stop at the EU borders imports of products manufactured using misappropriated TS/CBI;

- Rules on the calculation of damages, allowing for taking into account all relevant factors (lost sales, unjustified profits by the defendant, royalties, etc.);

- Uniform contractual rules on non-compete and/or non-disclosure clauses between the trade secret owner and employees;

- Rules ensuring that the confidentiality of the trade secret is kept during court proceedings and hearings, so that the TS is not lost or further disclosed in the course of legal actions;

- Rules on criminal penalties and/or fines for individuals and organisations responsible for misappropriation of trade secrets;
E.3 What impacts, if any, could you expect from an EU legislative proposal on trade secrets? (Alternative formulation: to be discussed: Which would be the positive or negative impacts of possible EU common rules on the protection of trade secrets from misappropriation for your company? (Check all boxes that apply)

Benefits (Alternative: Benefits for your company):

- Trade secrets would be safer; (Alternative [1]: Your trade secrets would be better protected as rules would have higher deterrent effect]
- Better business environment for investment in innovation by providing better assurance that investment can be recuperated
- More investment in R&D and innovation; (Alternative [4]: your company would be more inclined to invest in R&D and innovation because of the safer business environment for your trade secrets)
- Greater security in business transactions (agreements, collaborations) involving sharing/transferring/licensing of CBI/TS with another partner in a different EU Member-State (and therefore more willingness to share or transfer CBI/TS under confidential clauses to another partner in a different EU Member-State)
- More possibilities of getting returns from sharing, licensing or transferring know-how; (Alternative [6]: it will be easier for your company to get returns from sharing, licensing or transferring know-how)
- Lower transaction costs relating to contracts and agreements involving know-how transfer and licensing when operating in multiple Member-States
- Better conditions for network innovation (that is, with cooperation from different players) as opposed to in-house R&D only; (Alternative [5]: your company will be more inclined to cooperate with other players for R&D and innovation purposes ("network/collaborative innovation" as opposed to carrying out in-house R&D only)]
- Better conditions to access funding and venture capital; (Alternative [7]: your company will have better conditions to access funding and venture capital as your trade secrets will be better protected)
- Your company will need to spend less resources in adopting company-specific preventive measures to protect trade secrets
- More legal certainty and lower costs when litigating in other EU Member States to protect your trade secrets; Easier enforcement of a national court order in other EU Member States
- Reduction in litigation costs
- Other: ____________________________

(b) No perceived benefits (Alternative: no perceived benefits for your company)
(c) Possible negative impacts: 

- Increased risk of anticompetitive behaviour by the holders of trade secrets: Other holders of trade secrets could try to raise market barriers by carrying out abusive/intimidating litigation or similar behaviour.
- Duplication of costs in R&D due to secrecy: It will be more difficult to access to others' innovation, so your company is likely to waste efforts duplicating research in R&D.
- Less labour mobility: It will be more difficult for your company to recruit talented employees from other companies.
- Innovation would be impaired: It will be more difficult to access to others' innovation, e.g., your company will not be able to carry out incremental innovation.
- More barriers to market entry: Other companies will be more difficult to access others' innovation, e.g., your company will not be able to carry out incremental innovation.
- Other, specify: 

(d) No perceived negative impacts: 

(e) No opinion

Section F - Your Company

F.1 Your company name. Names of companies will be kept strictly confidential

F.2 Is your company part of a multinational group?

Yes ☐ No ☐

F.3 Your country (from computer list)

F.4 Principal **economic activity** of your company (from computer list): 

1. Manufacturing: Textiles
2. Manufacturing: Chemicals and chemical
3. Manufacturing: Basic pharmaceutical
4. Manufacturing: Computer, electronic, optical
5. Manufacturing: Machinery and equipment
6. Manufacturing: Motor vehicles
7. Electricity, gas steam and air conditioning supply
8. Water supply; sewerage, waste management and remediation activities
9. Publishing activities
10. Telecommunications
11. Fast moving consumer goods
12. Computer programming, consultancy and related activities
13. Financial and insurance activities
14. Scientific research and development
15. Legal and accounting activities
16. Biotech
17. Wholesale trade
18. Retail trade
19. Other _____ (fill in)

F.5 Is your business market characterized by products/services or process with a short lifecycle (less than 2 years)?

☐ Yes  ☐ No

F.6 Please estimate your company’s total turnover for the year 2011 - in millions of Euros and excluding VAT

€ ________

F.7 Please estimate your company’s average number of employees for the year 2011

_______

F.8 With respect to Research & Development (R&D) activities, rank in level internal R&D activities and acquisition of external R&D

Internal R&D ——————————————————— — Little — Medium — High

Acquisition of external R&D ——————————————————— — Little — Medium — High

Section G - Additional information

G.1 In the box below, please write any additional comments that you would like to make. Feel free to relate cases in which your company has been confronted with trade secrets/confidential business information misappropriation, also providing estimates of costs of litigation to protect trade secrets/confidential business information and damages suffered as a consequence of misappropriation of trade secrets/confidential business information. If you wish to provide further information in the course of a conversation or an interview, please specify your contact details so that we can keep in touch.

12
Name of respondent: _____ Names of respondents will be kept strictly confidential

Position in the company: ____

E-mail address (optional):

Thank you for taking the time to complete this survey.
76quinquies
Thank you so much.
Extremely clear.
I suggest that we opt for solution A.
Have a good weekend!
Yours, Luigi

In question E.2, the original idea was to ask first about the definition of trade secret and second about the one of misappropriation.
One could take any of the following two options.
A) to spell this in a clearer manner:
   • Clarifying what is a TS/CBI to be protected
   • Prohibition of acts of misappropriation of TS/CBI and a definition of such acts.
B) to merge the two steps:
   • Clarifying what a TS/CBI is and defining acts of misappropriation and misuse of TS/CBI which would be prohibited across the EU.
We suggest you decide.

In question E.3, we are happy with the way the reply options are formulated. They are indeed more fluent and easier for a company to reply.

Concerning the possibility to allow the respondent to tick a reply option saying that here are no benefits or no negative impacts, you are right that one could infer this from the absence of reply.

However, if we do not provide the reply option, there are some risks. If the respondent believes that there are no benefits and no negative effects (it could be possible), then he cannot tick any reply option (because this is not the same as "no opinion". From the "computer" perspective, the question would not be answered, which would be odd for the respondent. Hence, we might end up incentivising the "no opinion" reply (as people who do not see benefits or negative effects could hesitate where to reply) or, worse, we might incentivise people to tick at least a box in the "negative effects" ... (which is not our interest).

From this perspective, we would need the "no negative effects" box to tick, so as to make sure that people do not tick other boxes with negative effects. And if we have this one, we need the one "no benefits", as otherwise we could be accused of constructing a biased questionnaire.

As for the title of the question, we would insist on maintaining the word "misappropriation". It is less elegant to read but more accurate. Questions E.2 and E.3 are "policy-oriented" and we prefer we are not accused of biasing things.
Dear
Thanks for the quick reply.
We have included your remarks.
I am taking the liberty to propose some rephrasing of the E questions, to make them a bit more fluent.
Also, there are some parts (in yellow below) that seems a bit redundant.
Please let us know what you think.
Thanks so much for your time.
Yours, Luigi

E.2. Would your company benefit from EU legislation establishing common rules on the following? (Check all boxes that apply)

☐ Clarifying what is a TS/CBI to be protected against misappropriation across the EU;
☐ Prohibition of acts of misappropriation and misuse of TS/CBI and a definition of such acts;
☐ National court orders to stop the unlawful use of the misappropriated TS/CBI in the whole of the EU;
☐ National court orders requiring all customs authorities in the EU to stop at the EU borders imports of products manufactured using misappropriated TS/CBI;
☐ Rules on the calculation of damages including all relevant factors (lost sales, unjustified profits by the defendant, royalties, etc.);
☐ Uniform contractual rules on non-compete and/or non-disclosure clauses between the trade secret owner and employees;
☐ Rules ensuring that the confidentiality of the trade secret is kept during court proceedings and hearings, so that the TS is not lost or further disclosed in the course of legal actions;
☐ Rules on criminal penalties and/or fines for individuals and organisations responsible for misappropriation of trade secrets;
☐ Other (fill in)
☐ Other (fill in)
☐ Other (fill in)
E.3 Positive or negative effects for your company of possible EU common rules on the protection of TS/CBI [from misappropriation]? (Check all boxes that apply)

Positive effects

- Your TS/CBI would be better protected as these rules would act as a deterrent to misappropriation;
- Less resources would be spent on company-specific TS/CBI protection measures;
- Greater legal certainty and lower costs when litigating in other EU Member States to protect your TS/CBI;
- Higher investment in R&D and innovation thanks to a safer business environment;
- Better opportunities to cooperate with other players for R&D and innovation purposes ("network/collaborative innovation" as opposed to "in-house innovation");
- Greater returns from sharing, licensing or transferring know-how;
- Better conditions to access funding and venture capital thanks to better protection of TS/CBI;
- Other: __________
- No perceived positive effects [[can be inferred from the fact that no answer is checked]]

Negative effects

- Waste of resources on duplicative research (simple replication of what is already known)
- Difficulty in carrying out incremental innovation (it will be harder to build on others innovation)
- Competing trade secrets holders could try to raise market barriers by carrying out abusive/intimidating litigation or similar behavior;
- Less labour mobility;
- Other, specify ____________________________
- No perceived negative effects [[can be inferred from the fact that no answer is checked]]

- No opinion
Hi

Attached the revised Survey Questionnaire. We are finalizing relevant translation in French and German and the setup of the website. The official launch should be next Monday. We will keep you posted.

Kind regards,
Francesca
Full Survey Questionnaire

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

Purpose of the Survey
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 companies manage trade secrets and confidential business information, their perception on their importance as a competitive factor in the respective business, and their experience and views on legal protection and litigation. The aim is to understand whether the current legal framework is suited to ensure that competition is fair, and whether legal certainty and security in cross-border business activities can be improved in order to further encourage investment in research and development (R&D).

Confidential business information and Trade secrets
Companies often have information and know-how that they prefer to keep confidential (examples: list of clients, contractual terms with business partners, the launch of a new product, technology and know-how used in manufacturing, inventions that are not yet patented, etc.). Such information and know-how, which is not generally available or easily accessible to third parties (such as competitors), is important to the competitiveness and performance of the company that holds it. For the purpose of this survey such information and know-how will be referred to as "confidential business information or trade secrets" and shortened to "CBI/TS".

While many companies avoid loss or leakage of CBI/TS through internal measures and safeguards, it is also common for a company to have the need or interest in sharing some of that important information with other companies or organisations under confidentiality agreements. The more valuable the information is, the more there is the risk that someone tries to access and copy the information is question and pass it to a competitor, or that someone with whom you have shared the information under certain contractual conditions, starts using it (or disclosing it to third parties) without your authorisation and in breach of contractual terms. In this survey such acts will be referred to as misappropriation, misuse or leakage of CBI/TS.

Companies throughout the internal market should be properly protected against the theft or misappropriation of CBI/TS. Innovative companies should be able to share, transfer or license CBI/TS throughout the European Union with reasonable safety in order to be able to cooperate with other organisations in R&D activities, capture financing for their projects or to collect royalties and profit from the results of their efforts.

This survey provides an opportunity for your business to improve the information available to the European Commission and to help ensuring that its policy decisions are based on accurate evidence. You can complete an online version of this form at XXX. We would be grateful if you could complete the Survey before XXX.

Baker & McKenzie guarantees absolute confidentiality as regards the data submitted by respondents. The replies provided by you will not be disclosed to or shared with any third parties. While the list of participants may be made available, responses and results will be published in aggregated form only and therefore the responses provided by you will not be published or in any way disseminated with reference to a particular company.
The study and the results of the survey will be published on the following web page of the European Commission during the first quarter of 2013:

http://ec.europa.eu/internal_market/iprenforcement/index_en.htm

You can read 'The story behind trade secrets' as proposed by the European Commission at the following link:

http://ec.europa.eu/internal_market/smn/smn63/docs/smn63web_en.pdf#page=16

You can complete an online version of this form at XXX. We would be grateful if you could complete the Survey before XXX.

For any query or to request detailed information on the survey, please contact us at: tradesecretsstudy@bakermckenzie.com.

Thank you in advance for your participation in this Survey.
Structure of the Survey
The survey is composed of the following sections.

Section A – Your trade secrets
Section B – Threats to your trade secrets
Section C – Protection and misappropriation of your trade secrets
Section D – Litigation to protect and defend your trade secrets
Section E – Added value of any EU action in this area
Section F – Your Company
Section G – Additional information

Instructions for Completion
Please select the option – or options where expressly specified that multiple choices are allowed - that best represent(s) 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 an enterprise group, please answer all further questions only in relation to the company for which you are responding. Do not include results for other subsidiaries or parent enterprises.

Information necessary to reply to the following questions may come from different areas of your company. The final response however should be coordinated typically by the General counsel (for large companies) or the CEO (for medium and small companies).

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

Before proceeding, please read the introduction on what are trade secrets and confidential business information and make sure you are familiar with these issues. If yes, please start answering the following questions. If not, please pass this questionnaire to someone else in your company who manages trade secrets and confidential business information. The ideal recipient in your company to answer the questionnaire would be the General Counsel, CEO, Chief IP Counsel, Head of R&D.

Thank you for your cooperation!
Section A - Your Trade Secrets

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

A.1 Does your company have technical or commercial information related to its activity which it considers important to its competitiveness and which it keeps confidential?

- Yes  - No (Please go to question F.1)

A.2 Please rank the value of TS/CBI to your company in the following areas: (Check all boxes that apply)

**Technical information**
- R&D data (projects, results, etc.)  - Low  - Medium  - High
- Process know-how and technology (manufacturing processes, software, devices, plants design)  - Low  - Medium  - High
- Formulae and recipes  - Low  - Medium  - High
- Product technology  - Low  - Medium  - High

**Business information**
- Customer or suppliers lists and associated data (satisfaction surveys, customer profiling, etc.)  - Low  - Medium  - High
- Commercial bids and contracts, contractual terms  - Low  - Medium  - High
- Marketing data and planning (advertising, market surveys, sales figures and forecast)  - Low  - Medium  - High
- Financial information & business planning  - Low  - Medium  - High
- Other technical / business data (indicate):  - Low  - Medium  - High

A.3 Please rank the importance of TS/CSI for the competitiveness/innovative growth performance of your company:
- N/A  - Low  - Medium  - High
A.4 To what extent does your company rely on other intellectual property rights?

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<thead>
<tr>
<th>Rights</th>
<th>Low</th>
<th>Medium</th>
<th>High</th>
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<td>Designs</td>
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<tr>
<td>Other</td>
<td></td>
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</tbody>
</table>

A.5 Reasons for your company to protect knowledge by means of TS/CBI vis-à-vis other intellectual property rights (patents, designs or copyright)

(Check all boxes that apply)

- Lack of eligibility for other IP right protection
- Does not want to disclose information
- Uncertainty on whether IP rights will be granted
- Other IP rights do not provide adequate protection
- Costs to obtain and manage other IP rights (fees, monitoring of infringements, litigation costs)
- Time to obtain other IP rights (patent or other)
- Knowledge in question has a short lifetime

A.6 Does your company share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements (e.g. know-how transfer; transfer or licensing of unpatented technology, services know-how, etc.)

- Yes regularly
- Yes occasionally
- Never

A.7 In cases where your company does not share TS/CBI with other parties, this is because:

(Check all boxes that apply)

- There is no demand for our know-how
- We fear to lose the confidentiality of the TC/CBI through misuse, leakage or further disclosure to other parties without our authorization
- For other strategic reasons.

Section B – Threats to your trade secrets

B.1 In your business sector, what are the primary means by which companies usually obtain information about products, services, strategies of the other market players? (Check all boxes that apply)

- Clients or customers
- Suppliers of equipment, materials, services or software
- Reverse engineering
- Employees mobility
- Conferences, trade fairs, exhibitions
- Scientific journals and trade/technical publications
Espionage

Divulgation requested by regulatory authorities

B.2 To what extent do the following actors pose a risk of unauthorized access, disclosure, use or leakage of the TS/DBI of your company? (Check all boxes that apply)

- Current Employees
  - Low
  - Medium
  - High

- Former Employees
  - Low
  - Medium
  - High

- Competitors
  - Low
  - Medium
  - High

- Customers/clients
  - Low
  - Medium
  - High

- Consultants/internals
  - Low
  - Medium
  - High

- Suppliers/business partners
  - Low
  - Medium
  - High

- Regulatory agencies
  - Low
  - Medium
  - High

- Others having access to the premises (cleaning companies, electrician, etc.)
  - Low
  - Medium
  - High

- Other (please specify)
  - Low
  - Medium
  - High

B.3 Over the last 10 years, the risk of exposure to TS/CBI misappropriation for your company has:

- Increased significantly
- Increased moderately
- Remained constant
- Decreased
- Do not know/no opinion

Section C – Protection and misappropriation of your trade secrets

C.1 If your company is present or trades in more than one EU country, does your company apply different TS/CBI protection measures (such as confidentiality agreements, non-compete covenants, physical restrictions to access etc.) depending on the country in question?

- Yes
- No
- No opinion
- Not concerned
C.2 Over the last 10 years, did your company suffer attempts or acts of misappropriation of TS/CBI?

Within the EU
- None that we are aware of
- 1 to 5 times
- More than 5 times

Outside the EU
- None that we are aware of
- 1 to 5 times
- More than 5 times

If your company did not suffer attempts or acts of misappropriation please jump to question D5 [link to it].

C.3 Attempts/acts to misappropriate TS/CBI of your company were carried out by: (Check all boxes that apply)

- Current Employees
- Former Employees
- Competitors
- Customers/clients
- Consultants/internals
- Suppliers/business partners
- Regulatory agencies
- Others having access to the premises (cleaning companies, electrician, etc.)
- Other (please specify)_____

C.4 Please indicate one or more consequences suffered by your company as a result of the attempts and successful acts of misappropriation: (Check all boxes that apply)

- Loss of sales/clients/contracts
- Costs in internal investigation
- Costs in negotiating a settlement
- Costs in prosecuting and litigating
- Increase expenditure in protection measures
- Other (please specify) _______

Section D - Litigation before courts in the EU to protect and defend your trade secrets

D.1 If your company experienced misappropriation of TS/CBI during the past 10 years, did your company seek legal remedies before courts located in the EU?

- Yes, always
- Yes, but only in some cases
- No, we only litigated in courts outside the EU
- No, never

D.2 If your company sought legal remedies against misappropriation within the EU, was it
able to get (Check all boxes that apply):

- Court orders stopping unlawful use of misappropriated trade secrets
- Court orders to search and secure evidence of misappropriation
- Award of damages or other monetary compensation
- Criminal sanctions against perpetrator
- Monetary fine for the company or organisation involved in acquiring or transmitting the trade secret
- Court order for customs to seize goods at EU border
- Court order for destruction of goods that were manufactured using misappropriated trade secrets
- Publication of the Court decisions on the press/media
- None of the above

D.3 In case of litigation within the EU, if your company obtained an order from a national court to stop the use of misappropriated TS/CBI in the territory of that Member State, has your company tried to enforce this order in other Member States?

- Yes, and we were successful in all Member States where we tried
- Yes, but we were not successful in all Member States where we tried
- No, we preferred to start separate legal actions
- No, it was too costly to seek legal protection in other Member States
- No, because of the uncertainty of the result in other Member States
- No, there was no need because our case(s) only concerned one Member State
- Other (Please specify) __________

D.4 When your company decided not to seek legal remedies against misappropriation in the EU, what were the reasons? (Check all boxes that apply)

- Low value of the TS/CBI in question or of damages caused
- Initiating legal action would bring the case to the public arena and our company's reputation and image could be damaged
- Preference for out-of-Court settlement
- Litigation costs
- Expected duration of litigation
- Lack of trust on the judicial system of the relevant Member State
- Fear of losing TS/CBI in the course of the court proceedings
- Inability to identify offender
- Difficulty in collection evidence to prove that the defendant misappropriated a TS/CBI
- Inability to quantify damages
- Low probability of collecting awarded damages
- Lack of effective legal remedies
- Other, please specify

D.5 Has your company experienced, as defendant, abusive litigation by a competitor trying to intimidate your company with a false accusation of misappropriation of TS/CBI in the past 10 years?

In the EU
- Yes
- No

Outside the EU
Section E – Added value of any EU action in this area

E.1 Should the European Commission propose EU legislation with a view to ensure that the national rules providing relief against the misappropriation of TS/CBI provide effective and equivalent protection across the EU?

- Yes, as long as it does not lower the level of protection of TS/CBI in countries where my company is seated or operates
- Yes,
- No
- No opinion

E.2. Would your company benefit from EU legislation establishing common rules on the following? (Check all boxes that apply)

- Clarifying what is a TS/CBI to be protected
- Prohibition of acts of misappropriation of TS/CBI and a definition of such acts;
- National court orders to stop the unlawful use of the misappropriated TS/CBI in the whole of the EU;
- National court orders requiring all customs authorities in the EU to stop at the EU borders imports of products manufactured using misappropriated TS/CBI;
- Rules on the calculation of damages including all relevant factors (lost sales, unjustified profits by the defendant, royalties, etc.);
- Uniform contractual rules on non-compete and/or non-disclosure clauses between the trade secret owner and employees;
- Rules ensuring that the confidentiality of the trade secret is kept during court proceedings and hearings, so that the TS is not lost or further disclosed in the course of legal actions;
- Rules on criminal penalties and/or fines for individuals and organisations responsible for misappropriation of trade secrets;
- Other (fill in)
- Other (fill in)
- Other (fill in)
E.3 **Positive or negative effects for your company of possible EU common rules on the protection of TS/CBI from misappropriation? (Check all boxes that apply)**

**Positive effects**
- Your TS/CBI would be better protected as these rules would act as a deterrent to misappropriation;
- Less resources would be spent on company-specific TS/CBI protection measures;
- Greater legal certainty and lower costs when litigating in other EU Member States to protect your TS/CBI;
- Higher investment in R&D and innovation thanks to a safer business environment;
- Better opportunities to cooperate with other players for R&D and innovation purposes ("network/collaborative innovation" as opposed to "in-house innovation");
- Greater returns from sharing, licensing or transferring know-how;
- Better conditions to access funding and venture capital thanks to better protection of TS/CBI;
- Other: ________
- **No perceived positive effects**

**Negative effects**
- Waste of resources on duplicative research (simple replication of what is already known);
- Difficulty in carrying out incremental innovation (it will be harder to build on others innovation)
- Competing trade secrets holders could try to raise market barriers by carrying out abusive/intimidating litigation or similar behavior;
- Less labour mobility;
- Other, specify __________________________
- **No perceived negative effects**

- **No opinion**
Section F – Your Company

F.1 Your company name. Names of companies will be kept strictly confidential

F.2 Is your company part of a multinational group?
   □ Yes  □ No

F.3 Your country (from computer list)

F.4 Principal economic activity of your company (from computer list):

1. Manufacturing: Textiles
2. Manufacturing: Chemicals and chemical
3. Manufacturing: Basic pharmaceutical
4. Manufacturing: Computer, electronic, optical
5. Manufacturing: Machinery and equipment
6. Manufacturing: Motor vehicles
7. Electricity, gas steam and air conditioning supply
8. Water supply; sewerage, waste management and remediation activities
9. Publishing activities
10. Telecommunications
11. Fast moving consumer goods
12. Computer programming, consultancy and related activities
13. Financial and insurance activities
14. Scientific research and development
15. Legal and accounting activities
16. Biotech
17. Wholesale trade
18. Retail trade
19. Other _____ (fill in)

F.5 Is your business market characterized by products/services or process with a short lifecycle (less than 2 years)?
   □ Yes  □ No

F.6 Please estimate your company’s total turnover for the year 2011 - in millions of Euros and excluding VAT
   C ______

F.7 Please estimate your company’s average number of employees for the year 2011
   ______
Section G – Additional information

G.1 In the box below, please write any additional comments that you would like to make. Feel free to relate cases in which your company has been confronted with trade secrets/confidential business information misappropriation, also providing estimates of costs of litigation to protect trade secrets/confidential business information and damages suffered as a consequence of misappropriation of trade secrets/confidential business information. If you wish to provide further information in the course of a conversation or an interview, please specify your contact details so that we can keep in touch.

[Blank space]

Name of respondent: _____ Names of respondents will be kept strictly confidential

Position in the company: ____

E-mail address (optional):

Thank you for taking the time to complete this survey.
Dear,

We still do not have the web address since we have to upload the translations, so we have to use two websites: one initial website where companies will find general introduction on trade secrets and the aim of the survey, plus pdf documents of the survey in English, French and German that they can download or save on their computers. Then there will be the link to a second web address where the survey questionnaire may be filled in.

We are working to have things set up for next Monday/Tuesday.

Kind regards,

Francesca
Dear Francesca,

Thank you for your reply.
May I ask you an additional question?
Do you know the website on which the survey documents will be accessible?
We wanted to prepare a "promotion message" for our contacts and we would need to have the website address.

Thanks in advance,

Hi.

Attached the revised Survey Questionnaire. We are finalizing relevant translation in French and German and the set-up of the website. The official launch should be next Monday. We will keep you posted.

Kind regards,
Francesca

---Original Message-----
From: Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Sent: Tuesday, October 23, 2012 10:30 PM
To: (MARKT)
Cc: (MARKT); (MARKT); (MARKT)
Subject: R: Survey

Hi.

Attached the revised Survey Questionnaire. We are finalizing relevant translation in French and German and the set-up of the website. The official launch should be next Monday. We will keep you posted.

Kind regards,
Francesca

EUROPEAN COMMISSION
Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2, B-1049 Brussels
Tel. (+32) 22 9
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Questo messaggio può contenere informazioni confidenziali tutelate da segreto professionale. Se avete ricevuto questo messaggio per errore, vogliate per cortesia informare il mittente immediatamente rispondendo a questo messaggio e provvedendo quindi a cancellarlo dal vostro computer. Visitate www.bakermckenzie.com/disclaimer_italy per ulteriori importanti informazioni riguardanti questo messaggio.
Dear Francesca,

This is duly noted.

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

Do you really need to print this e-mail?
Think twice and protect the environment, now.

Dear Francesca,

As I will be away for , please send the Internet link for the survey to

Kind regards

EUROPEAN COMMISSION
Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2 B-1049 Brussels
Tel. (+32) 2 291 291
mailto: @ec.europa.eu

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Dear,

Please find attached copy of the reply that companies writing to the survey email address will receive.

For your convenience, we also attach the screenshot of the landing page of the survey website. The only thing that will be changed is that closing date of the survey will be December 3 instead of November 30.

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

Do you really need to print this e-mail? Think twice and protect the environment, now.

From: Gaudino, Francesca
Sent: sabato 10 novembre 2012 18:11
To: @ec.europa.eu
Cc: @ec.europa.eu; @ec.europa.eu; @ec.europa.eu; @ec.europa.eu; @ec.europa.eu; de Martinis, Lorenzo (Lorenzo.de.Martinis@bakermckenzie.com)
Subject: Survey

Dear

I understand your concerns since the survey is a key element of the all project and that is the reason why we decided to make extra efforts in order to make sure the survey provides the expected results in terms of completeness of the information.

The survey is started as the companies have been contacted and the websites in all the languages will be running by next Monday.
We are also taking care of the ‘external’ part of the survey, the one you are focusing on, and by Monday we should have implemented the mechanism of automated reply.

As to flags or the different way of displaying multiple languages available that the Commission has implemented, I asked web technicians if we can change it and they are trying to work this out, yet I am not sure we have enough time. If we cannot do it by tomorrow, we will use the flags.
Lastly, we are aware that we are working on a very tight timeframe (and this is not new on this project) and I can ensure you that we are doing our best to deliver what is expected.

We will keep you posted.

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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Do you really need to print this e-mail?
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From: __ec.europa.eu [mailto: __ec.europa.eu]
Sent: venerdi 9 novembre 2012 18:03
To: Gaudino, Francesca
Cc: __ec.europa.eu; __ec.europa.eu; __ec.europa.eu
Subject: RE: RE: Survey

Dear Francesca,

As you know according to the new time table
that we are proposing the draft of the final study is due on 13 December. This final version must on the basis of the data gathered:

- Provide a macro-economic assessment of the economic significance and contribution to innovation performance of trade secrets in the EU economy;

- Identify, through a Member State comparative analysis, how differing trade secret enforcement regimes affect the level of their use across Member States and across relevant sectors.

- Assess whether, and if so, to what degree, cross-border investment and growth particularly for innovative SMEs are adversely affected by the current fragmentation within the EU of trade secret protection rules.

- Formulate any recommendations on the protection of trade secrets and confidential business information, that may:

  - Contribute positively, in terms of costs and legal security, to cross border transactions, including the sharing of trade secrets and confidential business information;

  - Ensure that the European Union is equipped with efficient civil law enforcement mechanisms in response to acts of theft of trade secrets and confidential business information.

Having received no confirmation of the launching of the survey
As regards the particulars of the survey, from the feedback I have got from my colleagues I understand that the webpage will be displaying a number of national flags for respondents to choose one, and this will determine the language of the questionnaire. As I see it, this is not really appropriate as some countries are multilingual. I am also concerned that respondents may assume that the option of the flag should be done in accordance with their geographic location – which should not be the case. I therefore suggest that you use the more simple method used on the entry page for the EU:

http://europa.eu/

From our side, we are adjusting the text that we will put on our web. See below third paragraph in blue. Please confirm that the information therein is correct.

Regards

Following a call for tender, the European Commission contracted Baker & McKenzie to carry out a study on the economic and legal aspects linked with the use, misappropriation and litigation on confidential business information and trade secrets.

In this context Baker & McKenzie is launching a survey to industry aimed at collecting information on how companies manage their know-how and other information of strategic value for their competitiveness. The data to be collected from companies from all sizes and locations within the European Union will help the European Commission to better evaluate whether there is a need to provide companies, and in particular SMEs, with better means of redress against the economic harm resulting from dishonest appropriation of confidential business information.

The European Commission encourages any company to participate in the survey. In order to do so simply click on the following email address tradesecretstudy@bakermckenzie.com and send a message to Baker McKenzie expressing your willingness to participate in the survey (ex: Dear Sirs, I would like to participate in the survey on trade secrets). You will receive e-mail providing user ID, password and the webpage where the questionnaire can be completed. The webpage will provide number languages which you will be able to choose in order to complete the questionnaire.

---

EUROPEAN COMMISSION
Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2, B-1049 Brussels
Tel. (+32) 22 30 22 22
mailto:ec.europa.eu

From: Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Sent: Thursday, November 08, 2012 17:43 PM
To: (MARKT); (MARKT)
Cc: (MARKT); (MARKT)
Subject: RE: RE: Survey

Dear

The call today at 5 pm is then confirmed. Please let me know what number I can call.

In the meantime, I have inserted some information in your below message, so we can get aligned for the discussion.

Kind regards,
Francesca

Francesca Gaudino
Counsel
Dear Francesca,

I would be available for a call at 5pm, as well.

Here's already a number of issues we would like to address:

In order to prepare potential respondents properly we might need the following information:

- What, if anything, would they have to put in the email to you? (subject and/or body of email)

Simply stating the intention to take part to the survey; three is no fixed text.

- Will they get an immediate automated reply or might there be a delay?

They will get an e-mail providing userlD, password and the webpage where the questionnaire can be completed.

- We assume that the email will include a link to the website as well?

Yes, see above answer.

- Will the telephone operator be available 24/7?

It will be available during usual working hours – we do not expect people to compile the questionnaire over the week end.

- Will it be possible to save in-between and continue at a later stage?

Yes, this is confirmed.

Many thanks in advance.

Looking forward to talking to you later.
Dear Francesca,

Thank you for your email.

The email address that you have sent to us, should be used by the companies in order to obtain an ID code and a password? What sort of information should we provide together with the email?

Think we need some more information. It seems to me that providing an email so that they contact you does not seem sufficient, a webpage should be provided, and from there companies should be able to follow the instructions necessary to obtain the ID code and password as well.

I will be away for the rest of the day, but please provide let us know more details, as the rest of the team will be here waiting for more info.

Regards

EUROPEAN COMMISSION
Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2, B-1049 Brussels
Tel. (+32) 22 14 22 14

From: Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Sent: Wednesday, November 07, 2012 9:16 PM
To: [MARKT); (MARKT); (MARKT); (MARKT); de Martinis, Lorenzo
Cc: [MARKT); (MARKT); (MARKT); (MARKT); de Martinis, Lorenzo
Subject: RE: Survey

Dear

considering the new structure and organization model of the survey, to fill in the survey questionnaire participants will have to be provided with an ID code and a password, while the website will not be on a public URL.

These measures are necessary to allow a guided compilation of the questionnaire (i.e. with the help of a telephone operator in real time) and to give us at any moment a clear picture of the number of respondents. Accordingly, for companies that we will not contact directly you can make reference to the following email address: tradesecretstudy@bakermckenzie.com.
The survey in English language will be launched by tomorrow and in all the other national languages for all the 13 countries that are part of our main sample in the next days.

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

Do you really need to print this e-mail?
Think twice and protect the environment, now.

---

Sent: martedì 6 novembre 2012 11:08
To: Gaudino, Francesca
Cc: ____@ec.europa.eu; ____@ec.europa.eu; ____@ec.europa.eu; de Martinis, Lorenzo
Subject: RE: Survey

Dear Francesca

Thank you for your email.

As I understand it the survey will be launched tomorrow, or is it Thursday 8th?

Before that, and as soon as you have it ready, please send us the link to the website to be used by other companies (those who will not be contacted by you) so that we can put them on our website.

Regards

---

EUROPEAN COMMISSION
Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2, B-1149 Brussels
Tel: (+32) 2 294 99 99
mailtoRec.europa.eu

From: Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Sent: Monday, November 05, 2012 7:44 PM
To: (MARKT)
Cc: MARKT); (MARKT); (MARKT)
Subject: RE: Survey

Dear

This was not easy (like most of the activities in TSS..) but we are in good shape.

In order to make sure that we have the companies that we need for our main sample (i.e. 442 respondents distributed among the 13 jurisdictions involved and the 17 industry sectors), we have designed a specific methodology that goes well beyond what we have thought right after completion of the pilot survey.

In a nut shell, we (MARKT); (MARKT); de Martinis, Lorenzo

With this enhanced action plan, we trust that we will be able to deliver our report on the full survey for December 7, 2012.

Kind regards,
Francesca
We are very concerned that we still do not have any news from your side regarding the launching of the survey.

Please let us know what the situation is.

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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EUROPEAN SURVEY ON TRADE SECRETS

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

The European Commission entrusted Baker & McKenzie with 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 companies manage trade secrets and confidential business information, their perception on the importance of same as a competitive factor in the respective business, and their experience and views on legal protection and litigation. The aim is to understand whether the current legal framework is suitable for ensuring that competition is fair, and whether legal certainty and security in cross-border business activities can be improved in order to further encourage investment in research and development (R&D).

We would be grateful if you could complete the Survey questionnaire before November the 30th 2012, clicking below on the flag of your country and using your personal identification number as login name and your password.

For any query or to request detailed information on the survey, please contact us at: tradesecretstudy@bokermckenzie.com.

Thank you in advance for your participation in this Survey.
This survey provides an opportunity for your business to improve the information available to the European Commission and to help ensure that its policy decisions are based on accurate evidence.

Baker & McKenzie guarantees absolute confidentiality as regards the data submitted by respondents. The replies provided by you will not be disclosed to or shared with any third parties. While the list of participants may be made available, responses and results will be published in aggregated form only and, therefore, the responses provided will not be published or in any way circulated with reference to a particular company.

Confidential business information and Trade secrets

Companies often have information and know-how that they prefer to keep confidential (examples: list of clients, contractual terms with business partners, the launch of a new product, technology and know-how used in manufacturing, inventions that are not yet patented, etc.). Such information and know-how, which is not generally available or easily accessible by third parties (such as competitors), is important for the competitiveness and performance of the company that possesses it. For the purpose of this survey such information and know-how will be referred to as "confidential business information or trade secrets" and shortened to "CBI/TS".

While many companies avoid loss or disclosure of CBI/TS through internal measures and safeguards, it is also common for a company to need to or have an interest in sharing some of that important information with other companies or organisations under confidentiality agreements. The more valuable the information is, the more there is the risk that someone may try to access and copy the information in question and to pass it on to a competitor, or that someone with whom the information has been shared under certain contractual conditions will start using it (or disclosing it to third parties) without authorisation and in breach of contractual terms. In this survey such acts will be referred to as misappropriation, misuse or disclosure of CBI/TS.

Companies throughout the internal market should be properly protected against the theft or misappropriation of CBI/TS. Innovative companies should be able to share, transfer or license CBI/TS throughout the European Union with reasonable confidence, in order to be able to cooperate in R&D activities with other organisations, secure financing for their projects or to collect royalties and profits from the results of their efforts.

The study and the results of the survey will be published on the following web page of the European Commission during the first quarter of 2013:

http://ec.europa.eu/internal_market/iprenforcement/index_en.htm

You can read 'The story behind trade secrets' as proposed by the European Commission at the following web page:
http://ec.europa.eu/internal_market/smn/smn63/docs/smn63_web_en.pdf#page=16
Dear Mr ......,

Thank you for your interest in the European Commission Survey on Trade Secrets and confidential business information in the Internal Market.

The European Commission entrusted Baker & McKenzie with this 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.

Format Research is in charge of gathering interviews of companies which would like to take part in the survey.

We would be grateful if you could visit our website www.tradesecretstudv.eu and complete the Survey questionnaire before December the 3rd 2012, using the following credentials for your country:

username: __________
password: __________

The study and the results of the survey will be published on the following web page of the European Commission during the first quarter of 2013 http://ec.europa.eu/internal_market/iprenforcement/index_en.htm

You can read 'The story behind trade secrets' as proposed by the European Commission at the following web page:
http://ec.europa.eu/internal_market/smn/smn63/docs/smn63web_en.pdf #page=16

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80bips
Cara Francesca,

In a message you sent us Wednesday, it was said the following: "The survey in English language will be launched by tomorrow"

Yesterday, while discussing, I understood (and I asked this twice) that the functionality was already working in English.

We wanted to "experience" how the registering process was working before promoting the survey.

I would certainly appreciate that you confirm when the functionality will be running.

the email functionality is being setting up. I'll let you know as soon as it is running.

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message. Please visit www.bakermckenzie.com/disclaimer for other important information concerning this message.

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80ter

Dear Mr De Martinis,

Please find enclosed two original copies of the above-mentioned addendum. I would appreciate if you could initial all pages of the addendum, sign on the last page and return both copies to us as soon as possible at the following address:

European Commission
Internal Market DG, MARKT A2
For the attention of [REDACTED]
Office: SPA
B-1049 Brussels

Yours sincerely,
ADDENDUM N°1 TO

The European Union (hereinafter referred to as "the Union"), represented by the European Commission (hereinafter referred to as "the Commission"), which is represented for the purposes of the signature of this contract by the Authorising Officer by sub-delegation, Directorate-General for Internal Market and Services,
of the one part,

and

Studio Professionale Associato a Baker & Mckenzie
Professional Association
Registration No

Piazza Filippo Meda, 3
IT - 20121 Milan

VAT registration No (hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by Mr Lorenzo De Martinis, Principal,
of the other part,
HAVE AGREED AS FOLLOWS:

Article 1.2.3 is modified as follows:

1.2.3. The duration of the tasks shall not exceed the date of 09/02/2013. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from date of entry into force of the Contract.

The Commission is not obliged to react to any request for extension of the duration of the tasks received less than 1 month before expiry of the period of execution.

The rest of the contract remains unchanged

SIGNATURES

For the Contractor,

Mr Lorenzo De Martinis
Principal

Signature: ______________________
Done at ______________________, on

For the Commission,

[Signature]
Authorising Officer by Sub-delegation
Directorate-General for Internal Market and Services

Signature: ______________________
Done at Brussels, on

In duplicate in English.