

2013/0402 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure
(Text with EEA relevance)

NOTE: Differences between JURI's report and the Commission's proposal are indicated in ***bold/italics***. Differences between the COREPER text and the Commission's proposal are in **bold/underlined**. ***Bold/italics/underlined*** in the Commission column indicates JURI and Council are amending the Commission's proposal in the same manner.

Text in Grey indicate that further drafting has to be done

COMMISSION PROPOSAL	EP JURI REPORT	COUNCIL COMPROMISE TEXT	IDEAS
2013/0402 (COD)	2013/0402 (COD)	2013/0402 (COD)	2013/0402 (COD)
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (Text with EEA relevance)	AS COM	AS COM	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (Text with EEA relevance)
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	AS COM	AS COM	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	AS COM	AS COM	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,
Having regard to the proposal from the European Commission,	AS COM	AS COM	Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national	AS COM	AS COM	After transmission of the draft legislative act to the national

Parliaments;			Parliaments;
Having regard to the opinion of the European Economic and Social Committee	Having regard to the opinion of the European Economic and Social Committee* * <i>OJ C 226, 16.7.2014, p. 48.</i>		Having regard to the opinion of the European Economic and Social Committee* * <i>OJ C 226, 16.7.2014, p. 48.</i>
After consulting the European Data Protection Supervisor ,	AS COM	deleted	
Acting in accordance with the ordinary legislative procedure, Whereas:	AS COM	AS COM	Acting in accordance with the ordinary legislative procedure. Whereas:
(1) Businesses and non-commercial research institutions invest in acquiring, developing and applying know-how and information, which is the currency of the knowledge economy. This investment in generating and applying intellectual capital determines their competitiveness in the market and therefore their returns to investment, which is the underlying motivation for business research and development. Businesses have recourse to different means to appropriate the results of their innovative activities when openness does not allow for the full exploitation of their research and innovation investments. Use of <i>formal</i> intellectual property rights such as patents, design rights or copyright is one of them. Another is to protect access and exploit the knowledge that is valuable to the	(1) Businesses and non-commercial research institutions invest in acquiring, developing and applying know-how and information, which is the currency of the knowledge economy <i>and gives a competitive advantage.</i> This investment in generating and applying intellectual capital determines their competitiveness <i>and innovative performance</i> in the market and therefore their returns to investment, which is the underlying motivation for business research and development. Businesses have recourse to different means to appropriate the results of their innovative activities when openness does not allow for the full exploitation of their research and innovation investments. Use of intellectual property rights such as patents, design rights or copyright is one of them. Another is to protect access	(1) Businesses and non-commercial research institutions invest in acquiring, developing and applying know-how and information, which is the currency of the knowledge economy. This investment in generating and applying intellectual capital determines their competitiveness in the market and therefore their returns to investment, which is the underlying motivation for business research and development. Businesses have recourse to different means to appropriate the results of their innovative activities when openness does not allow for the full exploitation of their research and innovation investments. Use of formal intellectual property rights such as patents, design rights or copyright is one of them. Another is to protect access and exploit the knowledge that is valuable to the	TEXT FROM OUTCOME of 2 nd technical meeting: (1) Businesses and non-commercial research institutions invest in acquiring, developing and applying know-how and information, which is the currency of the knowledge economy <i>and gives a competitive advantage.</i> This investment in generating and applying intellectual capital determines their competitiveness <i>and innovative performance</i> in the market and therefore their returns to investment, which is the underlying motivation for business research and development. Businesses have recourse to different means to appropriate the results of their innovative activities when openness does not allow for the full exploitation of their research and innovation investments. Use of intellectual property rights such as patents,

<p>entity and not widely known. Such know-how and business information, that is undisclosed and intended to remain confidential is referred to as a trade secret. Businesses, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right and use confidentiality as a business and research innovation management tool, covering a diversified range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers, business plans or market research and strategies. By protecting such a wide range of know-how and commercial information, whether as a complement or as an alternative to intellectual property rights, trade secrets allow the creator to derive profit from his/her creation and innovations and therefore are particularly important for research and development and innovative performance.</p>	<p>and exploit the knowledge that is valuable to the entity and not widely known. Such valuable know-how and business information, that is undisclosed and intended to remain confidential is referred to as a trade secret. Businesses, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right and use confidentiality as a business competitiveness and research innovation management tool, covering a diversified range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers, business plans or market research and strategies. <i>Small and medium-sized enterprises (SMEs), in particular, value and rely on trade secrets more, because the use of intellectual property rights tends to be expensive and SMEs often do not have sufficient specialised human and financial resources to manage and protect such rights.</i> By protecting such a wide range of know-how and commercial information, whether as a complement or as an alternative to intellectual property</p>	<p>entity and not widely known. Such know-how and business information, that is undisclosed and intended to remain confidential is referred to as a trade secret. Businesses, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right and use confidentiality as a business competitiveness and research innovation management tool, covering a diversified range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers (<u>which may involve personal data</u>), business plans or market research and strategies. By protecting such a wide range of know-how and commercial information, whether as a complement or as an alternative to intellectual property rights, trade secrets allow the creator to derive profit from his/her creation and innovations and therefore are particularly important for <u>business competitiveness as well as for</u> research and development and innovative performance.</p>	<p>design rights or copyright is one of them. Another is to protect access and exploit the knowledge that is valuable to the entity and not widely known. Such valuable know-how and business information, that is undisclosed and intended to remain confidential is referred to as a trade secret. Businesses, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right and use confidentiality as a business competitiveness and research innovation management tool, covering a diversified range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers (<u>which may involve personal data</u>), business plans or market research and strategies. <i>Small and medium-sized enterprises (SMEs), in particular, value and rely on trade secrets more, because the use of intellectual property rights tends to be expensive and SMEs often do not have sufficient specialised human and financial resources to manage and protect such rights.</i> By protecting such a wide range of</p>
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	rights, trade secrets allow the creator to derive profit from his/her creation and innovations and therefore are particularly important <i>for business competitiveness as well as</i> for research and development and innovative performance.		know-how and commercial information, whether as a complement or as an alternative to intellectual property rights, trade secrets allow the creator to derive profit from his/her creation and innovations and therefore are particularly important <i>for business competitiveness as well as</i> for research and development and innovative performance.
(2) Open innovation is an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. <i>Trade secrets have an important role in protecting the exchange of knowledge between businesses within and across the borders of the internal market in the context of research and development and innovation.</i> Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the internal market. <i>Open innovation is a catalyst for new ideas to find their way to the market meeting the needs of consumers and tackling societal challenges.</i> In an internal market	(2) Open innovation is <i>a catalyst for new ideas which meet the needs of consumers and tackle societal challenges to find their way to the market. It is</i> an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the internal market. <i>The dissemination of knowledge and information should be considered essential for the purpose of ensuring dynamic, positive and equal business development opportunities, especially for SMEs.</i> In an internal market where barriers to such	(2) Open innovation is an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. Trade secrets have an important role in protecting the exchange of knowledge between businesses <u>and research institutions</u> within and across the borders of the internal market in the context of research and development and innovation. Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the internal market. Open innovation is a catalyst for new ideas to find their way to the market meeting the needs of consumers and tackling societal	TEXT FROM OUTCOME of 2nd technical meeting: (2) Open innovation is <i>a catalyst for new ideas which meet the needs of consumers and tackle societal challenges to find their way to the market. It is</i> an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the internal market. <i>The dissemination of knowledge and information should be considered essential for the purpose of ensuring dynamic, positive and equal business development opportunities,</i>

<p>where barriers to such cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation is also important for employment growth and improving competitiveness of the Union economy. Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by <u>third</u> parties.</p>	<p>cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation, <i>and where employment mobility is not hindered</i>, is also important for employment growth and improving competitiveness of the Union economy. <i>Trade secrets have an important role in protecting the exchange of knowledge between businesses, including, in particular, SMEs, and research institutions within and across the borders of the internal market, in the context of research and development and innovation.</i> Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by third parties.</p>	<p>challenges. In an internal market where barriers to such cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation is also important for employment growth and improving competitiveness of the Union economy. Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by third<u>other</u> parties.</p>	<p><i>especially for SMEs.</i> In an internal market where barriers to such cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation, <i>and where employment mobility is not unduly hindered</i>, is also important for employment growth and improving competitiveness of the Union economy. <i>Trade secrets have an important role in protecting the exchange of knowledge between businesses, including, in particular, SMEs, and research institutions within and across the borders of the internal market, in the context of research and development and innovation.</i> Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by third<u>other</u> parties.</p>
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<p>(3) Innovative businesses are increasingly exposed to dishonest practices aiming at misappropriating trade secrets, such as theft, unauthorised copying, economic espionage, breach of confidentiality requirements, whether from within or from outside of the Union. Recent developments, such as globalisation, increased outsourcing, longer supply chains, increased use of information and communication technology. contribute to increasing the risk of those practices. The unlawful acquisition, use or disclosure of a trade secret compromises the legitimate trade secret holder's ability to obtain first mover returns using the outputs of its innovative efforts. Without effective and comparable legal means for defending trade secrets across the Union, incentives to engage in innovative cross-border activity within the internal market are undermined and trade secrets are unable to fulfil their potential as drivers of economic growth and jobs. Thus, innovation and creativity are discouraged and investment diminishes, affecting the smooth functioning of the</p>	<p>As COM</p>	<p>As COM</p>	<p>NO CHANGES TO COM prop.</p> <p>(3) Innovative businesses are increasingly exposed to dishonest practices aiming at misappropriating trade secrets, such as theft, unauthorised copying, economic espionage, breach of confidentiality requirements, whether from within or from outside of the Union. Recent developments, such as globalisation, increased outsourcing, longer supply chains, increased use of information and communication technology. contribute to increasing the risk of those practices. The unlawful acquisition, use or disclosure of a trade secret compromises the legitimate trade secret holder's ability to obtain first mover returns using the outputs of its innovative efforts. Without effective and comparable legal means for defending trade secrets across the Union, incentives to engage in innovative cross-border activity within the internal market are undermined and trade secrets are unable to fulfil their potential as drivers of economic growth and jobs. Thus, innovation and creativity are discouraged and investment diminishes, affecting</p>
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internal market and undermining its growth enhancing potential.			the smooth functioning of the internal market and undermining its growth enhancing potential.
<p>(4) <i>International efforts taken in the framework of the World Trade Organisation to address this problem led to the conclusion of the Agreement on trade-related aspects of intellectual property (the TRIPS Agreement). It contains, inter alia, provisions on the protection of trade secrets against their unlawful acquisition, use or disclosure by third parties, which are common international standards. All Member States, as well as the Union itself, are bound by this Agreement which was approved by Council Decision 94/800/EC*.</i></p> <hr/> <p>* Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p.1).</p>	<p>(4) The Agreement on trade-related aspects of intellectual property (the TRIPS Agreement) contains, <i>inter alia</i>, provisions on the protection of trade secrets against their unlawful acquisition, use or disclosure by third parties, which are common international standards. All Member States, as well as the Union itself, are bound by this Agreement which was approved by Council Decision 94/800/EC. <i>In order to protect trade secrets against misappropriation, some Member States have legislation in place; however some Member States have not defined trade secrets and do not have binding legislation to protect against the misappropriation of trade secrets. Such a situation creates gaps and barriers to the effective functioning of the internal market. It is also appropriate to define at Union level the situations where the acquisition, use and disclosure of a trade secret is lawful or unlawful, and to limit the period of application of redress procedures, so that this</i></p>	AS COM	<p>TEXT FROM OUTCOME of 2nd technical meeting:</p> <p>(4) International efforts taken in the framework of the World Trade Organisation to address this problem led to the conclusion of the Agreement on trade-related aspects of intellectual property (the TRIPS Agreement). It contains, inter alia, provisions on the protection of trade secrets against their unlawful acquisition, use or disclosure by third parties, which are common international standards. All Member States, as well as the Union itself, are bound by this Agreement which was approved by Council Decision 94/800/EC*.</p> <hr/> <p>* Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p.1).</p>

	<p><i>Directive can serve its purpose of consistent protection of trade secrets in the Union.</i></p> <hr/> <p>*Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p.1).</p>		
<p>(5) <i>Notwithstanding the TRIPS Agreement</i>, there are important differences in the Member States legislation as regards the protection of trade secrets against their unlawful acquisition, use or disclosure by other persons. Thus, for example, not all Member States have adopted national definitions of trade secrets and/or unlawful acquisition, use or disclosure of a trade secret, so that the scope of protection is not readily accessible and differs throughout Member States. Furthermore, there is no consistency as regards the civil law remedies available in case of unlawful acquisition, use or disclosure of trade secrets as cease and desist orders are not always available in all Member States</p>	<p>(5) There are important differences in the Member States legislation as regards the protection of trade secrets against their unlawful acquisition, use or disclosure by other persons. Thus, for example, not all Member States have adopted national definitions of trade secrets and/or unlawful acquisition, use or disclosure of a trade secret, so that the scope of protection is not readily accessible and differs throughout Member States. Furthermore, there is no consistency as regards the civil law remedies available in case of unlawful acquisition, use or disclosure of trade secrets as cease and desist orders are not always available in all Member States</p>	AS COM	<p>TEXT FROM OUTCOME of 2nd technical meeting:</p> <p>(5) Notwithstanding the TRIPS Agreement, there are important differences in the Member States legislation as regards the protection of trade secrets against their unlawful acquisition, use or disclosure by other persons. Thus, for example, not all Member States have adopted national definitions of trade secrets and/or unlawful acquisition, use or disclosure of a trade secret, so that the scope of protection is not readily accessible and differs throughout Member States. Furthermore, there is no consistency as regards the civil law remedies available in case of unlawful acquisition, use or disclosure of trade secrets as cease</p>

<p>against third parties who are not competitors of the legitimate trade secret holder. Divergences also exist across the Member States with respect to the treatment of third parties who acquired the trade secret in good faith but subsequently come to learn, at the time of use, that their acquisition derived from a previous unlawful acquisition by another party.</p>	<p>against third parties who are not competitors of the legitimate trade secret holder. Divergences also exist across the Member States with respect to the treatment of third parties who acquired the trade secret in good faith but subsequently come to learn, at the time of use, that their acquisition derived from a previous unlawful acquisition by another party.</p>		<p>and desist orders are not always available in all Member States against third parties who are not competitors of the legitimate trade secret holder. Divergences also exist across the Member States with respect to the treatment of third parties who acquired the trade secret in good faith but subsequently come to learn, at the time of use, that their acquisition derived from a previous unlawful acquisition by another party.</p>
<p>(6) National rules also differ as to whether legitimate trade secret holders may seek the destruction of goods manufactured by third parties who use trade secrets unlawfully or the return or destruction of any documents, files or materials containing or implementing the unlawfully acquired or used trade secret. Also, applicable national rules on the calculation of damages do not always take account of the intangible nature of trade secrets, which makes it difficult to demonstrate the actual profits lost or the unjust enrichment of the infringer where no market value can be established for the information in question. Only a few Member States allow for the application of abstract rules on the</p>	<p>AS COM</p>	<p>(6) National rules also differ as to whether legitimate trade secret holders may seek the destruction of goods manufactured by third parties who use trade secrets unlawfully or the return or destruction of any documents, files or materials containing or implementing the unlawfully acquired or used trade secret. Also, applicable national rules on the calculation of damages do not always take account of the intangible nature of trade secrets, which makes it difficult to demonstrate the actual profits lost or the unjust enrichment of the infringer where no market value can be established for the information in question. Only a few Member States allow for the</p>	<p>TEXT FROM OUTCOME of 2nd technical meeting:</p> <p>(6) National rules also differ as to whether legitimate trade secret holders may seek the destruction of goods manufactured by third parties who use trade secrets unlawfully or the return or destruction of any documents, files or materials containing or implementing the unlawfully acquired or used trade secret. Also, applicable national rules on the calculation of damages do not always take account of the intangible nature of trade secrets, which makes it difficult to demonstrate the actual profits lost or the unjust enrichment of the infringer where no market value can be established for the information in question. Only a few</p>

<p>calculation of damages based on the reasonable royalty or fee which could have been due had a licence for the use of the trade secret existed. Additionally, many Member States rules <u>do not guarantee the preservation</u> of the confidentiality of a trade secret if the trade secret holder introduces a claim for alleged unlawful acquisition, use or disclosure of the trade secret by a third party, thus reducing the attractiveness of the existing measures and remedies and weakening the protection offered.</p>		<p>application of abstract rules on the calculation of damages based on the reasonable royalty or fee which could have been due had a licence for the use of the trade secret existed. Additionally, many Member States rules do not guarantee the preservation <u>provide for appropriate protection</u> of the confidentiality of a trade secret if the trade secret holder introduces a claim for alleged unlawful acquisition, use or disclosure of the trade secret by a third party, thus reducing the attractiveness of the existing measures and remedies and weakening the protection offered.</p>	<p>Member States allow for the application of abstract rules on the calculation of damages based on the reasonable royalty or fee which could have been due had a licence for the use of the trade secret existed. Additionally, many Member States rules do not guarantee the preservation <u>provide for appropriate protection</u> of the confidentiality of a trade secret if the trade secret holder introduces a claim for alleged unlawful acquisition, use or disclosure of the trade secret by a third party, thus reducing the attractiveness of the existing measures and remedies and weakening the protection offered.</p>
<p>(7) The differences in the legal protection of trade secrets provided for by the Member States imply that trade secrets do not enjoy an equivalent level of protection throughout the Union, thus leading to fragmentation of the internal market in this area and weakening the overall deterrent effect of the rules. The internal market is affected in so far as such differences lower businesses' incentives to undertake innovative-related cross-border economic activity, including research or manufacturing cooperation with</p>	AS COM	AS COM	<p>NO CHANGES TO COM prop. (7) The differences in the legal protection of trade secrets provided for by the Member States imply that trade secrets do not enjoy an equivalent level of protection throughout the Union, thus leading to fragmentation of the internal market in this area and weakening the overall deterrent effect of the rules. The internal market is affected in so far as such differences lower businesses' incentives to undertake innovative-related cross-border economic activity, including research or</p>

<p>partners, outsourcing or investment in other Member States, which would depend on the use of the information protected as trade secrets. Cross-border network research and development as well as innovation-related activities, including related manufacturing and subsequent cross-border trade, are rendered less attractive and more difficult within the Union, thus also resulting in innovation-related inefficiencies at Union scale. In addition, higher business risk appears in Member States with comparatively lower levels of protection, where trade secrets may be stolen or otherwise unlawfully acquired more easily. This leads to inefficient allocation of capital to growth-enhancing innovation within the internal market because of the higher expenditure on protective measures to compensate for the insufficient legal protection in some Member States. It also favours the activity of unfair competitors who following the unlawful acquisition of trade secrets could spread resulting goods across the internal market. Legislative regime differences also facilitate the importation of goods from third countries into the Union</p>			<p>manufacturing cooperation with partners, outsourcing or investment in other Member States, which would depend on the use of the information protected as trade secrets. Cross-border network research and development as well as innovation-related activities, including related manufacturing and subsequent cross-border trade, are rendered less attractive and more difficult within the Union, thus also resulting in innovation-related inefficiencies at Union scale. In addition, higher business risk appears in Member States with comparatively lower levels of protection, where trade secrets may be stolen or otherwise unlawfully acquired more easily. This leads to inefficient allocation of capital to growth-enhancing innovation within the internal market because of the higher expenditure on protective measures to compensate for the insufficient legal protection in some Member States. It also favours the activity of unfair competitors who following the unlawful acquisition of trade secrets could spread resulting goods across the internal market. Legislative regime differences also facilitate the importation of goods</p>
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through entry points with weaker protection, when the design, manufacturing or marketing of those goods rely on stolen or otherwise unlawfully acquired trade secrets. On the whole, such differences create a prejudice to the proper functioning of the internal market.			from third countries into the Union through entry points with weaker protection, when the design, manufacturing or marketing of those goods rely on stolen or otherwise unlawfully acquired trade secrets. On the whole, such differences create a prejudice to the proper functioning of the internal market.
(8) It is appropriate to provide for rules at Union level to approximate the national legislative systems so as to ensure a sufficient and consistent level of redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret. For this purpose, it is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed as to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality. By nature, such definition should exclude trivial information and should not extend to the knowledge	(8) It is appropriate to provide for rules at Union level to approximate the national legislative systems so as to ensure a sufficient and consistent level of redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret. For this purpose, it is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed as to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality. <i>Such information or know-how should furthermore have commercial</i>	(8) It is appropriate to provide for rules at Union level to approximate the national legislative systems so as to ensure a sufficient and consistent level of <u>civil</u> redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret, <u>without prejudice to the possibility for Member States to provide for more far reaching protection against the unlawful acquisition, use or disclosure of trade secrets as long as the safeguards protecting the interests of other parties are respected.</u> For this purpose, it is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed as	[COUNCIL PROPOSAL] [Recital calling for rules + minimum harmonisation clause [Art. 1(1)]] (8) It is appropriate to provide for rules at Union level to approximate the national legislative systems so as to ensure a sufficient and consistent level of <u>civil</u> redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret, <u>without prejudice to the possibility for Member States to provide for more far reaching protection against the unlawful acquisition, use or disclosure of trade secrets as long as the safeguards protecting the interests of other parties are respected.</u> [Recital on definition of TS [Art. 2(1)] + covering part of the workers issues in 1(2a):

<p>and skills gained by employees in the normal course of their employment and which are known among or accessible to persons within the circles that normally deal with the kind of information in question.</p>	<p><i>value, whether actual or potential. Such information or know-how should be considered to have commercial value especially where its unauthorized acquisition, use or disclosure is likely to harm the interests of the person lawfully controlling it, or where it undermines his or her scientific and technical potential, business or financial interests, strategic positions or ability to compete.</i> By nature, such definition should exclude trivial information and should not extend to the knowledge and skills gained by employees in the normal course of their employment and which are <i>generally</i> known among or <i>readily</i> accessible to persons within the circles that normally deal with the kind of information in question.</p>	<p>to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality. <u>Such information or know-how should furthermore have commercial value, whether actual or potential. Such information or know-how has commercial value especially insofar as its unauthorized acquisition, use or disclosure is likely to harm the interests of the person lawfully controlling it in that it undermines his or her scientific and technical potential, business or financial interests, strategic positions or ability to compete.</u> By nature, such definition should exclude trivial information and should not extend to the knowledge and skills gained by employees in the normal course of their employment and which are <u>generally</u> known among or <u>readily</u> accessible to persons within the circles that normally deal with the kind of information in question.</p>	<p>information which is not a TS and skills & experience] (8a) For this purpose, it is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed as to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality. <u>Such information or know-how should furthermore have commercial value, whether actual or potential. Such information or know-how has commercial value especially insofar as its unauthorized acquisition, use or disclosure is likely to harm the interests of the person lawfully controlling it in that it undermines his or her scientific and technical potential, business or financial interests, strategic positions or ability to compete.</u> By nature, such definition should exclude trivial information and should not extend to the knowledge <u>experience</u> and skills gained by</p>
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			employees in the normal course of their employment and <u>nor to information</u> which are <u>is generally</u> known among or <u>readily</u> accessible to persons within the circles that normally deal with the kind of information in question.
<p>(9) It is also important to identify the circumstances under which legal protection is justified. For this reason, it is necessary to establish the conduct and practices which are to be regarded as unlawful acquisition, use or disclosure of a trade secret. <u>Disclosure by Union's institutions and bodies or national public authorities of business-related information they hold pursuant to the obligations of Regulation (EC) No 1049/2001 of the European Parliament and of the Council or to other rules on the access to documents should not be considered unlawful disclosure of a trade secret.</u></p> <p>* Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p.43).</p>	<p>(9) It is also important to identify the circumstances under which legal protection is justified. For this reason, it is necessary to establish the conduct and practices which are to be regarded as unlawful acquisition, use or disclosure of a trade secret.</p>	<p>(9) It is also important to identify the circumstances under which legal protection is justified. For this reason, it is necessary to establish the conduct and practices which are to be regarded as unlawful acquisition, use or disclosure of a trade secret.</p> <p>Disclosure by Union's institutions and bodies or national public authorities of business-related information they hold pursuant to the obligations of Regulation (EC) No 1049/2001 of the European Parliament and of the Council* or to other rules on the access to documents should not be considered unlawful disclosure of a trade secret</p> <p>* Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p.43).</p>	<p>TEXT FROM OUTCOME of 2nd technical meeting: [Recital on justification for defining unlawful conduct (Art. 3)]</p> <p>(9) It is also important to identify the circumstances under which legal protection is justified. For this reason, it is necessary to establish the conduct and practices which are to be regarded as unlawful acquisition, use or disclosure of a trade secret.</p>
	<i>(9a) It is important to clarify that</i>	<u>(10a) Furthermore, the</u>	[Technical suggestion: an attempt

	<p><i>the measures adopted to protect trade secrets against their unlawful acquisition, use and disclosure should not affect the application of Union or national rules that require the disclosure of information, including trade secrets, to the public or to public authorities, the rules that allow public authorities to collect information for the performance of their duties or rules that allow any further disclosure by those public authorities of relevant information to the public. This concerns in particular rules on the disclosure by the Union's institutions and bodies or national public authorities of business-related information they hold pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹, Regulation (EC) No 1367/2006 of the European Parliament and the Council² and Directive 2003/4/EC of the European Parliament and the Council³ or to other rules on public access to documents or on the transparency obligations of national public authorities.</i></p> <hr/> <p>¹ Regulation (EC) No 1049/2001 of the</p>	<p><u>acquisition, use or disclosure of trade secrets, whenever imposed or permitted by law should not be treated as unlawful. As a result, the acquisition or disclosure of a trade secret by administrative or judicial authorities for the performance of their duties should be lawful. Also, disclosure by Union's institutions and bodies or national public authorities of business-related information they hold pursuant to the obligations of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ***or to other rules on the public access to documents or on the transparency obligations of national public authorities should not be considered unlawful disclosure of a trade secret. The acquisition and disclosure of trade secrets in the context of the exercise of the rights of workers representatives to information, consultation and participation in accordance with Union and national law or practices, and the collective defence of the interests of workers and employers, including co-</u></p>	<p>to merge recital 9a of EP with the substance of Council's recital 10a] [This is the recital on negative scope related to Article 1(2)(b) and (c). Council recital 10a was on "lawful" conduct, but it is possibly preferable that the issues identified are addressed as negative scope.] (9a) <i>It is important to clarify that the measures adopted to protect trade secrets against their unlawful acquisition, use and disclosure this Directive should not affect the application of Union or national rules that require the disclosure of information, including trade secrets, to the public or to public authorities, the rules that allow public authorities to collect information for the performance of their duties or rules that <u>require or</u> allow any further disclosure by those public authorities of relevant information to the public. This concerns in particular rules on the disclosure by the Union's institutions and bodies or national public authorities of business-related information they hold pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹, Regulation (EC) No 1367/2006 of the European</i></p>
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	<p><i>(9b) The acquisition, use or disclosure of trade secrets, whenever imposed or permitted by law, should be treated as lawful for the purpose of this Directive, without prejudice to any obligation of confidentiality as regards the trade secret or any limitation as to its use that Union or national law may impose on the recipient of the information. In particular, this Directive should not release the public authorities from the confidentiality obligations to which they are subject in respect of information passed on by holders of trade secrets, irrespective of whether those</i></p>		<p>[COUNCIL PROPOSAL] [Recital on lawful practices (new Art. 2a)]</p> <p><i>(9b) The acquisition, use or disclosure of trade secrets, whenever imposed or permitted by law, should <u>not</u> be treated as <u>unlawful</u> for the purpose of this Directive, without prejudice to any obligation of confidentiality as regards the trade secret or any limitation as to its use that Union or national law may impose on the recipient <u>acquirer</u> of the information. In particular, this Directive should not release the public authorities from the confidentiality obligations to which they are subject in respect of information passed on by</i></p>

	<p><i>obligations are laid down in national or in Union law. This concerns inter alia, the confidentiality obligations in respect of information forwarded to awarding authorities in the context of procurement procedures, as laid down, for example, in Directive 2014/23/EU of the European Parliament and of the Council¹, Directive 2014/24/EU of the European Parliament and of the Council² and Directive 2014/25/EU of the European Parliament and of the Council³.</i></p> <hr/> <p>¹ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).</p> <p>² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).</p> <p>³ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).</p>		<p><i>holders of trade secrets, irrespective of whether those obligations are laid down in national or in Union law. This concerns inter alia, the confidentiality obligations in respect of information forwarded to awarding authorities in the context of procurement procedures, as laid down, for example, in Directive 2014/23/EU of the European Parliament and of the Council¹, Directive 2014/24/EU of the European Parliament and of the Council² and Directive 2014/25/EU of the European Parliament and of the Council³.</i></p> <hr/> <p>¹ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).</p> <p>² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).</p> <p>³ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).</p>
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	<i>(9c) This Directive does not provide for criminal penalties to be imposed on persons who unlawfully acquire, use or disclose a trade secret. It is thus without prejudice to the right of the Member States to supplement its civil- and commercial-law provisions with measures under the criminal law. Where Member States draft such measures, however, they should take full account of the safeguards laid down in this Directive, in order to ensure that a proper balance is struck between the protection of trade secrets and business freedom, freedom of expression and freedom of information.</i>		[NOT NEEDED ANYMORE]
(10) In the interest of innovation and to foster competition, the provisions of this Directive should not create any exclusive right on the know-how or information protected as trade secrets. Thus, independent discovery of the same know-how and information remains possible <u>and competitors of the trade secret holder are also free to reverse engineer any</u> lawfully acquired product.	(10) In the interest of innovation and to foster competition, the provisions of this Directive should not create any exclusive right on the know-how or information protected as trade secrets. Thus, independent discovery of the same know-how and information remains possible and competitors of the trade secret holder are also free to reverse engineer any lawfully acquired product. <i>However, while healthy competition brought about by the lawful use of data, including data</i>	(10) In the interest of innovation and to foster competition, the provisions of this Directive should not create any exclusive right on the know-how or information protected as trade secrets. Thus, independent discovery of the same know-how or information remains possible and competitors of the trade secret holder are also free to reverse engineer any. <u>Reverse engineering</u> of a lawfully acquired product <u>is a lawful means of acquiring information except when otherwise agreed</u>	[Technical suggestion: recital on lawful acquisition – new Art. 2a].] (10) In the interest of innovation and to foster competition, the provisions of this Directive should not create any exclusive right on the know-how or information protected as trade secrets. Thus, independent discovery of the same know-how or information remains possible and competitors of the trade secret holder are also free to reverse engineer any. <u>Reverse engineering</u> of a lawfully acquired product <u>is a lawful means of acquiring</u>

	<p><i>generated by reverse engineering, should be encouraged, it is essential to tackle dishonest commercial practices.</i></p>	<p><u>by contract. The freedom of entering into such contractual arrangements may however be limited by law, such as it is the case of Article 5(3) of Directive 2009/24/EC of the European Parliament and of the Council**.</u></p> <p><u>* Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs, OJ L 111, 5.5.2009, p.16.</u></p>	<p><u>information except when otherwise agreed by contract. The freedom of entering into such contractual arrangements may however be limited by law, such as it is the case of Article 5(3) of Directive 2009/24/EC of the European Parliament and of the Council**.</u></p> <p><u>* Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs, OJ L 111, 5.5.2009, p.16.</u></p>
	<p><i>(10a) In some industry sectors, where creators and innovators cannot benefit from exclusive rights and where innovation has traditionally relied upon trade secrets, products can nowadays be easily reverse-engineered once in the market. In those cases, those creators and innovators may be victims of practices such as parasitic copying or slavish imitations that free ride on their reputation and innovation efforts. Some national laws dealing with unfair competition address those practices. While this Directive does not aim to reform or harmonize unfair</i></p>		<p>[EP proposal: Self-standing recital. Indirectly linked to Art. 2a on lawful use of information.]</p> <p><i>(10a) In some industry sectors, where creators and innovators cannot benefit from exclusive rights and where innovation has traditionally relied upon trade secrets, products can nowadays be easily reverse-engineered once in the market. In those cases, those creators and innovators may be victims of practices such as parasitic copying or slavish imitations that free ride on their reputation and innovation efforts. Some national laws dealing with unfair competition address those</i></p>

	<i>competition law in general, it would be appropriate that the Commission carefully examine the need for Union action in that area.</i>		<i>practices. While this Directive does not aim to reform or harmonize unfair competition law in general, it would be appropriate that the Commission carefully examine the need for Union action in that area.</i>
		<u>(10a) Furthermore, the acquisition, use or disclosure of trade secrets, whenever imposed or permitted by law should not be treated as unlawful. As a result, the acquisition or disclosure of a trade secret by administrative or judicial authorities for the performance of their duties should be lawful. Also, disclosure by Union's institutions and bodies or national public authorities of business-related information they hold pursuant to the obligations of Regulation (EC) No 1049/2001 of the European Parliament and of the Council ***or to other rules on the public access to documents or on the transparency obligations of national public authorities should not be considered unlawful disclosure of a trade secret. The acquisition and disclosure of trade secrets in the context of the exercise of the rights of workers</u>	<i>[see 9a above]</i>

		<p><u>representatives to information, consultation and participation in accordance with Union and national law or practices, and the collective defence of the interests of workers and employers, including co-determination, is also excluded from the scope of unlawful acquisition, without prejudice of any duty of confidentiality imposed on the recipients of information so acquired. The acquisition or disclosure of a trade secret in the context of statutory audits performed in accordance with Union or national law should not be considered an unlawful conduct either.</u></p> <p><u>*** Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p.43)</u></p>	
	<p><i>(12b) It is essential that Member States respect the freedom of the press and the media, as enshrined in Article 11(2) of the Charter of Fundamental Rights</i></p>	<p><u>(10b) Media often make public data or information considered to be a trade secret by another party but the publication of which could be of public</u></p>	<p>[COUNCIL PROPOSAL: it takes account of EP 12b.] [Recital on freedom of expression and information. Cf. (Art. 1(2)(a))]</p>

	<p><i>of the European Union in order to ensure that the Directive does not restrict journalistic works, in particular with regard to investigation, protection of sources, and the right of the public to be informed.</i></p>	<p><u>interest. As a result, it is important that measures and remedies provided for should not restrict the exercise of the freedom of expression and information (which encompasses media freedom and pluralism as reflected in Article 11 of the Charter of Fundamental Rights of the European Union) whenever legitimate</u></p>	<p><u>(10b) While this Directive provides for measures and remedies which may consist in preventing the disclosure of information in order to protect the confidentiality of trade secrets, it is essential that the exercise of the right to freedom of expression and information (which encompasses media freedom and pluralism as reflected in Article 11 of the Charter of Fundamental Rights of the European Union) is not unduly restricted, in particular with regard to investigative journalism and the protection of journalistic sources.</u></p>
		<p><u>(10c) This Directive should not affect the right of the social partners to enter into collective agreements, where foreseen under labour law, as regards duties not to disclose a trade secret or to limit its use and the consequences of a breach of such duties by the party subject to them, provided that any such collective agreement does not restrict the safeguards concerning the exceptions in this Directive when an application for measures, procedures and remedies</u></p>	<p>[Council suggestion: Recital on autonomy of social partners Cf. Article 1(2)(e)]</p> <p><u>(10c) This Directive should not affect the right of the social partners to enter into collective agreements, where foreseen under labour law, as regards duties not to disclose a trade secret or to limit its use and the consequences of a breach of such duties by the party subject to them, provided that any such collective agreement does not restrict the safeguards concerning the exceptions in this</u></p>

		<u>provided for in this Directive for an alleged acquisition, use and disclosure of a trade secret shall be dismissed.</u>	<u>Directive when an application for measures, procedures and remedies provided for in this Directive for an alleged acquisition, use and disclosure of a trade secret shall be dismissed.</u>
(11) In line with the principle of proportionality the measures and remedies intended to protect trade secrets should be tailored to meet the objective of a smooth functioning internal market for research and innovation without jeopardising other objectives and principles of public interest. In this respect, the measures and remedies ensure that competent judicial authorities account for the value of a trade secret, the seriousness of the conduct resulting in the unlawful acquisition, use or disclosure of the trade secret as well as the impact of such conduct. It should also be ensured that the competent judicial authorities are provided with the discretion to weigh up the interests of the parties to the litigation, as well as the interests of third parties including, where appropriate, consumers.	(11) In line with the principle of proportionality the measures and remedies intended to protect trade secrets should be tailored to meet the objective of a smooth functioning internal market for research and innovation, <i>in particular by having a deterrent effect against the unlawful acquisition, use and disclosure of a trade secret</i> , without jeopardising <i>or undermining fundamental rights and freedoms or the public interest, such as public safety, consumer protection, public health and environmental protection, and without any prejudice to the mobility of workers</i> . In this respect, the measures and remedies ensure that competent judicial authorities account for <i>factors such as</i> the value of a trade secret, the seriousness of the conduct resulting in the unlawful acquisition, use or disclosure of the trade secret as well as the impact of such conduct. It should	(11) In line with the principle of proportionality the measures and remedies intended to protect trade secrets should be tailored to meet the objective of a smooth functioning internal market for research and innovation without jeopardising other objectives and principles of public interest. In this respect, the measures and remedies ensure that competent judicial authorities account for <u>factors such as</u> the value of a trade secret, the seriousness of the conduct resulting in the unlawful acquisition, use or disclosure of the trade secret as well as the impact of such conduct. It should also be ensured that the competent judicial authorities are provided with the discretion to weigh up the interests of the parties to the litigation, as well as the interests of third parties including, where appropriate, consumers.	TEXT FROM OUTCOME of 2 nd technical meeting: [Recital on proportionality. Link to general provisions on measures, remedies [Arts. 5/6] but also the proportionality tests in Arts. 10(2) and 12(1)] (11) In line with the principle of proportionality the measures, <u>procedures</u> and remedies intended to protect trade secrets should be tailored to meet the objective of a smooth functioning internal market for research and innovation, <i>in particular by having a deterrent effect against the unlawful acquisition, use and disclosure of a trade secret</i> , without jeopardising <i>or undermining fundamental rights and freedoms or the public interest, such as public safety, consumer protection, public health and environmental protection, and without any prejudice to the mobility of workers</i> . In this respect, the measures and remedies ensure that competent judicial authorities account for <i>factors such as</i> the

	also be ensured that the competent judicial authorities are provided with the discretion to weigh up the interests of the parties to the litigation, as well as the interests of third parties including, where appropriate, consumers.		value of a trade secret, the seriousness of the conduct resulting in the unlawful acquisition, use or disclosure of the trade secret as well as the impact of such conduct. It should also be ensured that the competent judicial authorities are provided with the discretion to weigh up the interests of the parties to the litigation, as well as the interests of third parties including, where appropriate, consumers.
(12) The smooth functioning of the internal market would be undermined if the measures and remedies provided for were used to pursue illegitimate intents incompatible with the objectives of this Directive. Therefore, it is important to ensure that judicial authorities are empowered to sanction abusive behaviour by claimants who act in bad faith and submit manifestly unfounded applications. <i>It is also important that measures and remedies provided for should not restrict the freedom of expression and information (which encompasses media freedom and pluralism as reflected in Article 11 of the Charter of Fundamental Rights of the European Union) or whistleblowing activity. Therefore</i>	(12) The smooth functioning of the internal market would be undermined if the measures and remedies provided for were used to pursue illegitimate intents, <i>such as creating unjustified barriers to the internal market or to labour mobility, that are</i> incompatible with the objectives of this Directive. Therefore, it is important to ensure that judicial authorities are empowered to sanction abusive behaviour by claimants who act in bad faith and submit manifestly unfounded applications.	(12) The smooth functioning of the internal market would be undermined if the measures and remedies provided for were used to pursue illegitimate intents incompatible with the objectives of this Directive. Therefore, it is important to ensure that empower their judicial authorities are empowered to sanction to adopt appropriate measures with regard to abusive behaviour by claimants who act abusively or in bad faith and submit manifestly unfounded applications with, for instance, the purpose of unfairly delaying or restricting the respondent's access to the market or otherwise intimidating or harassing the respondent . It is also important that measures and remedies	[Technical comment: The first part of Council recital 12 works if Article 6(2) is amended as per Council's proposal. Otherwise, the text of the Commission's recital would make better sense.] (12) The smooth functioning of the internal market would be undermined if the measures, procedures and remedies provided for were used to pursue illegitimate intents incompatible with the objectives of this Directive. Therefore, it is important to ensure that empower their judicial authorities are empowered to sanction to adopt appropriate measures with regard to abusive behaviour by claimants who act abusively or in bad faith and submit manifestly unfounded applications with, for instance, the

<p><i>the protection of trade secrets should not extend to cases in which disclosure of a trade secret serves the public interest in so far as relevant misconduct or wrongdoing is revealed.</i></p>		<p>provided for should not restrict the freedom of expression and information (which encompasses media freedom and pluralism as reflected in Article 11 of the Charter of Fundamental Rights of the European Union) or whistleblowing activity. Therefore the protection of trade secrets should not extend to cases in which disclosure of a trade secret serves the public interest in so far as relevant misconduct or wrongdoing is revealed.</p>	<p><u>purpose of unfairly delaying or restricting the respondent's access to the market or otherwise intimidating or harassing the respondent.</u> It is also important that measures and remedies provided for should not restrict the freedom of expression and information (which encompasses media freedom and pluralism as reflected in Article 11 of the Charter of Fundamental Rights of the European Union) or whistleblowing activity. Therefore the protection of trade secrets should not extend to cases in which disclosure of a trade secret serves the public interest in so far as relevant misconduct or wrongdoing is revealed.</p>
	<p><i>(12a) Measures and remedies provided for under this Directive should not restrict whistleblowing activity. Therefore, the protection of trade secrets should not extend to cases in which disclosure of a trade secret serves the public interest, insofar as directly relevant misconduct or wrongdoing is revealed. The latter should not be seen as preventing the competent judicial authorities from allowing an exception to the application of measures, procedures and remedies where</i></p>		<p>[Technical suggestion, based on EP text] [Recital on the whistleblowing exception, cf. Art. 4(2)(b)] <i>(12a) Measures, <u>procedures</u> and remedies provided for under this Directive should not restrict whistleblowing activity. Therefore, the protection of trade secrets should not extend to cases in which disclosure of a trade secret serves the public interest, insofar as directly relevant misconduct, <u>or</u> wrongdoing <u>or illegal activity</u> is revealed. The latter should not be seen as preventing the competent judicial authorities from allowing</i></p>

	<i>the respondent had all the reasons to believe in good faith that his conduct met the appropriate criteria set out in this Directive.</i>		<i>an exception to the application of measures, procedures and remedies where the respondent had all the reasons to believe in good faith that his conduct met the appropriate criteria set out in this Directive.</i>
	<i>(12b) It is essential that Member States respect the freedom of the press and the media, as enshrined in Article 11(2) of the Charter of Fundamental Rights of the European Union in order to ensure that the Directive does not restrict journalistic works, in particular with regard to investigation, protection of sources, and the right of the public to be informed.</i>		See above, 10b.
	<i>(12c) The increased use of online web services to conduct business and research, the storage of more confidential data in virtual storage places, and the increased use of e-commerce and digitalization as a whole, gives rise to a need for harmonized legislation across the Union, which would protect misappropriated use of trade secrets, and which in turn would ensure trust and protection among businesses and consumers and promote the</i>		withdrawn

	<i>formation of the Digital Single Market, which is one of the foundations of an effectively functioning internal market.</i>		
(13) In the interest of legal certainty and considering that legitimate trade secret holders are expected to exercise a duty of care as regards the preservation of the confidentiality of their valuable trade secrets and the monitoring of their use, it appears appropriate to restrict the possibility to initiate actions for the protection of trade secrets to a limited period <u>following the date on which the trade secret holders became aware, or had reason to become aware, of the unlawful acquisition, use or disclosure of their trade secret by a third party.</u>	(13) In the interest of <i>preserving the smooth functioning of the internal market for research and innovation and in the interest of</i> legal certainty and considering that legitimate trade secret holders are expected to exercise a duty of care as regards the preservation of the confidentiality of their valuable trade secrets and the monitoring of their use, it appears appropriate to restrict the possibility to initiate actions for the protection of trade secrets to a period <i>of three years</i> following the date on which the trade secret holders became aware, or had reason to become aware, of the unlawful acquisition, use or disclosure of their trade secret by a third party.	(13) In the interest of legal certainty and considering that legitimate trade secret holders are expected to exercise a duty of care as regards the preservation of the confidentiality of their valuable trade secrets and the monitoring of their use, it appears appropriate to restrict substantive claims or the possibility to initiate actions for the protection of trade secrets to a limited period following the date on which the trade secret holders became aware, or had reason to become aware, of the unlawful acquisition, use or disclosure of their trade secret by a third party.	[Recital on limitation period. Art.7] (13) In the interest of legal certainty and considering that legitimate trade secret holders are expected to exercise a duty of care as regards the preservation of the confidentiality of their valuable trade secrets and the monitoring of their use, it appears appropriate to subject restrict substantive claims or the possibility to make claims or to initiate actions for the protection of trade secrets to a limited reasonable limitation period following the date on which the trade secret holders became aware, or had reason to become aware, of the unlawful acquisition, use or disclosure of their trade secret by a third party. National law should also provide, in a clear and unambiguous manner, when that period begins to run and under which circumstances that period is interrupted or suspended.
(14) The prospect of losing the confidentiality of a trade secret during litigation procedures often deters legitimate trade secret holders from instituting proceedings to defend their trade secrets, thus jeopardising the	(14) The prospect of losing the confidentiality of a trade secret during litigation procedures often deters legitimate trade secret holders from instituting proceedings to defend their trade secrets, thus jeopardising the	(14) The prospect of losing the confidentiality of a trade secret during litigation procedures often deters legitimate trade secret holders from instituting proceedings to defend their trade secrets, thus jeopardising the	[Technical drafting suggestion. Recital on Article 8(1)] (14) The prospect of losing the confidentiality of a trade secret during litigation procedures often deters legitimate trade secret holders from instituting

<p>effectiveness of the measures and remedies provided for. For this reason, it is necessary to establish, subject to appropriate safeguards ensuring the right to a fair trial, specific requirements aimed at protecting the confidentiality of the litigated trade secret in the course of legal proceedings instituted for its defence. These should include the possibility to restrict access to evidence or hearings, or to publish only the non-confidential elements of judicial decisions. Such protection should remain in force after the legal proceedings have ended for as long as the information covered by the trade secret is not in the public domain.</p>	<p>effectiveness of the measures and remedies provided for. For this reason, it is necessary to establish, subject to appropriate safeguards ensuring the right to a fair trial, specific requirements aimed at protecting the confidentiality of the litigated trade secret in the course of legal proceedings instituted for its defence. These should include the possibility to restrict access to evidence or hearings, or to publish only the non-confidential elements of judicial decisions. <i>As the main purpose of the proceedings is to assess the nature of the information which is the subject of the dispute, those restrictions should not be such as to prevent at least one person from each of the parties and their respective legal representatives from having full access to all the documents in the file. It should also be for the judge to satisfy himself, when imposing such restrictions, that each of the parties has adequate representation.</i> Such protection should remain in force after the legal proceedings have ended for as long as the information covered by the trade secret is not in the public domain.</p>	<p>effectiveness of the measures and remedies provided for. For this reason, it is necessary to establish, subject to appropriate safeguards ensuring the right to a fair trial, specific requirements aimed at protecting the confidentiality of the litigated trade secret in the course of legal proceedings instituted for its defence. These should include the possibility to restrict <u>the circle of persons entitled to have</u> access to evidence or hearings, or to publish only the non-confidential elements of judicial decisions. <u>In order to ensure that the right of the parties to a fair trial is not undermined, when the circle of persons entitled to have access to evidence or hearings is restricted, at least one person from each party and its respective lawyer or representative should form part of that circle. Also, in the case that the party is a legal person, the number of natural persons within that circle should be such as to ensure proper representation of that legal person.</u> Such protection should remain in force after the legal proceedings have ended for as</p>	<p>proceedings to defend their trade secrets, thus jeopardising the effectiveness of the measures and remedies provided for. For this reason, it is necessary to establish, subject to appropriate safeguards ensuring the right to a fair trial, specific requirements aimed at protecting the confidentiality of the litigated trade secret in the course of legal proceedings instituted for its defence. These should include the possibility to restrict access to evidence or hearings, or to publish only the non-confidential elements of judicial decisions. Such protection should remain in force after the legal proceedings have ended for as long as the information covered by <u>constituting</u> the trade secret is not in the public domain.</p> <p><u>[Recital on Art. 8(2)] (14a) These Those requirements should include, as a minimum, the possibility to restrict the circle of persons entitled to have access to evidence or hearings, bearing in mind that all those persons are subject to the confidentiality requirements set out in this Directive, and</u> or to publish only the non-confidential elements of judicial decisions. <u>In this context,</u></p>
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		<p>long as the information covered by the trade secret is not in the public domain.</p>	<p><u>considering that assessing the nature of the information which is the subject of the dispute is one of the main purposes of the legal proceedings, it is particularly important to ensure both the effective protection of the confidentiality of trade secrets and compliance with the right to an effective remedy and to a fair trial of the parties to those proceedings. That circle of persons should therefore consist of at least one natural person from each of the parties as well as their respective lawyers and, where applicable, other representatives appropriately qualified in accordance with national law in order to defend, represent or serve the interests of a party in legal proceedings covered by this Directive, who all have full access to such evidence or hearings. In the case that one of the parties is a legal person, that party should be able to propose the natural person or persons who should form part of that circle of persons so as to ensure proper representation of that legal person, subject to appropriate judicial control to prevent that the objective of the</u></p>
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			<p><u>restriction of access to evidence and hearings is undermined. Those safeguards should not be understood as requiring the parties to be represented by a lawyer or another representative during the legal proceedings when such representation is not necessary in accordance with the relevant rules of national law.</u> Nor should they be understood as restricting the capacity of the courts to decide, in conformity with the applicable rules and practice of the Member State concerned, whether and to what extent relevant court officials should also have full access to evidence and hearings for the exercise of their duties.</p>
<p>(15) Unlawful acquisition of a trade secret by a third party could have devastating effects on its legitimate holder since once publicly disclosed it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. As a result, it is essential to provide for fast and accessible interim measures for the immediate termination of the unlawful acquisition, use or disclosure of a trade secret. Such relief must be available without</p>	<p>(15) Unlawful acquisition, <i>use or disclosure</i> of a trade secret by a third party could have devastating effects on its legitimate holder since once publicly disclosed it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. As a result, it is essential to provide for fast and accessible interim measures for the immediate termination of the unlawful acquisition, use or disclosure of a trade secret. Such</p>	<p>(15) Unlawful acquisition of a trade secret by a third party could have devastating effects on its legitimate holder since once publicly disclosed it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. As a result, it is essential to provide for fast effective and accessible interim provisional measures for the immediate termination of the unlawful acquisition, use or disclosure of a trade secret,</p>	<p>TEXT FROM OUTCOME of 2nd technical meeting: [Recital on provisional measures. Art. 9]</p> <p>(15) Unlawful acquisition, <i>use or disclosure</i> of a trade secret by a third party could have devastating effects on its legitimate holder since once publicly disclosed it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. As a result, it is essential to provide for fast effective and accessible interim provisional measures for the</p>

<p>having to await a decision on the substance of the case, with due respect for the rights of defence and the principle of proportionality having regard to the characteristics of the case in question. Guarantees of a level sufficient to cover the costs and the injury caused to the respondent by an unjustified request may also be required, particularly where any delay would cause irreparable harm to the legitimate holder of a trade secret.</p>	<p>relief must be available without having to await a decision on the substance of the case, with due respect for the rights of defence and the principle of proportionality having regard to the characteristics of the case in question. Guarantees of a level sufficient to cover the costs and the injury caused to the respondent by an unjustified request may also be required, particularly where any delay would cause irreparable harm to the legitimate holder of a trade secret.</p>	<p><u>including when such trade secret is used for the provision of services.</u> Such relief must be available without having to await a decision on the substance of the case, with due respect for the rights of defence and the principle of proportionality having regard to the characteristics of the case in question. <u>In certain instances, the alleged infringer may be permitted, subject to the lodging of guarantees, to continue to use the trade secret or disclose it, where there is little risk that it will enter the public domain.</u> Guarantees of a level sufficient to cover the costs and the injury caused to the respondent by an unjustified request may also be required, particularly where any delay would cause irreparable harm to the legitimate holder of a trade secret.</p>	<p>immediate termination of the unlawful acquisition, use or disclosure of a trade secret, <u>including when such trade secret is used for the provision of services.</u> Such relief must be available without having to await a decision on the substance of the case, with due respect for the rights of defence and the principle of proportionality having regard to the characteristics of the case in question. <u>In certain instances, the alleged infringer may be permitted, subject to the lodging of guarantees, to continue to use the trade secret or disclose it, in particular, where there is little risk that it will enter the public domain.</u> Guarantees of a level sufficient to cover the costs and the injury caused to the respondent by an unjustified request may also be required, particularly where any delay would cause irreparable harm to the legitimate holder of a trade secret.</p>
<p>(16) For the same reason, it is also important to provide for measures to prevent further unlawful use or disclosure of a trade secret. For prohibitory measures to be effective, their duration, <i>when circumstances require a limitation</i></p>	<p>(16) For the same reason, it is also important to provide for measures to prevent further unlawful use or disclosure of a trade secret. For prohibitory measures to be effective <i>and proportionate</i>, their duration should be sufficient to</p>	<p>(16) For the same reason, it is also important to provide for measures to prevent further unlawful use or disclosure of a trade secret, <u>including when such trade secret is used for the provision of services.</u> For prohibitory</p>	<p>TEXT FROM OUTCOME of 2nd technical meeting: [recital on definitive injunctions – Art. 11] (16) For the same reason, it is also important to provide for measures to prevent further unlawful use or disclosure of a trade secret,</p>

<p><i>in time</i>, should be sufficient to eliminate any commercial advantage which the third party could have derived from the unlawful acquisition, use or disclosure of the trade secret. In any event, no measure of this type should be enforceable if the information originally covered by the trade secret is in the public domain for reasons that cannot be attributed to the respondent.</p>	<p>eliminate any commercial advantage which the third party could have derived from the unlawful acquisition, use or disclosure of the trade secret, <i>including when such a trade secret is used for the provision of services, and should be limited in time so as to avoid the creation of unjustified barriers to competition in the internal market.</i> In any event, no measure of this type should be enforceable if the information originally covered by the trade secret is in the public domain for reasons that cannot be attributed to the respondent.</p>	<p>measures to be effective, their duration, when circumstances require a limitation in time, should be sufficient to eliminate any commercial advantage which the third party could have derived from the unlawful acquisition, use or disclosure of the trade secret. In any event, no measure of this type should be enforceable if the information originally covered by the trade secret is in the public domain for reasons that cannot be attributed to the respondent.</p>	<p><u>including when such trade secret is used for the provision of services.</u> For prohibitory measures to be effective <u>and proportionate</u>, their duration, when circumstances require a limitation in time, should be sufficient to eliminate any commercial advantage which the third party could have derived from the unlawful acquisition, use or disclosure of the trade secret. In any event, no measure of this type should be enforceable if the information originally covered by the trade secret is in the public domain for reasons that cannot be attributed to the respondent.</p>
<p>(17) A trade secret may be unlawfully used to design, manufacture or market goods, or components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the functioning of the internal market. In <i>those</i> cases and when the trade secret in question has a significant impact on the quality, value or price of the resulting good or on reducing the cost, facilitating or speeding up its manufacturing or marketing processes, it is important to empower judicial authorities to</p>	<p>(17) A trade secret may be unlawfully used to design, manufacture, <i>develop</i> or market <i>services or</i> goods, or components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the functioning of the internal market. <i>In the cases where unlawful acquisition has been demonstrated</i> and when the trade secret in question has a significant impact on the quality, value or price of the resulting good or on reducing the cost, facilitating or</p>	<p>(17) A trade secret may be unlawfully used to design, manufacture or market goods, or components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the functioning of the internal market. In those cases and when the trade secret in question has a significant impact on the quality, value or price of the resulting good or on reducing the cost, facilitating or speeding up its manufacturing or marketing processes, it is important to</p>	<p>TEXT FROM OUTCOME of 2nd technical meeting: [Recital on corrective measures on infringing goods. Art.11, but also 2(4).] (17) A trade secret may be unlawfully used to design, manufacture or market goods, or components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the functioning of the internal market. In those cases and when the trade secret in question has a significant impact on the quality, value or price of the resulting good</p>

order appropriate measures with a view to ensure that those goods are not put on the market or are removed from it. Considering the global nature of trade, it is also necessary that these measures include the prohibition of importing those goods into the Union or storing them for the purposes of offering or placing them on the market. Having regard to the principle of proportionality, corrective measures should not necessarily entail the destruction of the goods when other viable options are present, such as depriving the good of its infringing quality or the disposal of the goods outside the market, for example, by means of donations to by charitable organisations.	speeding up its manufacturing or marketing processes, it is important to empower judicial authorities to order appropriate measures with a view to ensure that those goods are not put on the market or are removed from it. Considering the global nature of trade, it is also necessary that these measures include the prohibition of importing those goods into the Union or storing them for the purposes of offering or placing them on the market. Having regard to the principle of proportionality, corrective measures should not necessarily entail the destruction of the goods when other viable options are present, such as depriving the good of its infringing quality or the disposal of the goods outside the market, for example, by means of donations to by charitable organisations.	empower judicial authorities to order effective and appropriate measures with a view to ensure that those goods are not put on the market or are removed from it. Considering the global nature of trade, it is also necessary that these measures include the prohibition of importing those goods into the Union or storing them for the purposes of offering or placing them on the market. Having regard to the principle of proportionality, corrective measures should not necessarily entail the destruction of the goods when other viable options are present, such as depriving the good of its infringing quality or the disposal of the goods outside the market, for example, by means of donations to by charitable organisations.	or on reducing the cost, facilitating or speeding up its manufacturing or marketing processes, it is important to empower judicial authorities to order effective and appropriate measures with a view to ensure that those goods are not put on the market or are removed from it. Considering the global nature of trade, it is also necessary that these measures include the prohibition of importing those goods into the Union or storing them for the purposes of offering or placing them on the market. Having regard to the principle of proportionality, corrective measures should not necessarily entail the destruction of the goods when other viable options are present, such as depriving the good of its infringing quality or the disposal of the goods outside the market, for example, by means of donations to by charitable organisations.
(18) A person may have originally acquired a trade secret in good faith but only become aware at a later stage, including upon notice served by the original trade secret holder, that his or her knowledge of the trade secret in question derived from sources using or disclosing the relevant trade secret in an	AS COM	AS COM	[NO CHANGES TO COM proposal. [recital on measures alternative to injunctions. Art. 12(3)] (18) A person may have originally acquired a trade secret in good faith but only become aware at a later stage, including upon notice served by the original trade secret holder, that his or her knowledge of the

<p>unlawful manner. In order to avoid that under those circumstances the corrective measures or injunctions provided for could cause disproportionate harm to that person, Member States should provide for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure, provided that such compensation does not exceed the amount of royalties or fees which would have been due had that person obtained authorisation to use the trade secret in question, for the period of time for which use of the trade secret could have been prevented by the original trade secret holder. Nevertheless, where the unlawful use of the trade secret would constitute an infringement of law other than that foreseen in this Directive or would be likely to harm consumers, such unlawful use should not be allowed.</p>			<p>trade secret in question derived from sources using or disclosing the relevant trade secret in an unlawful manner. In order to avoid that under those circumstances the corrective measures or injunctions provided for could cause disproportionate harm to that person, Member States should provide for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure, provided that such compensation does not exceed the amount of royalties or fees which would have been due had that person obtained authorisation to use the trade secret in question, for the period of time for which use of the trade secret could have been prevented by the original trade secret holder. Nevertheless, where the unlawful use of the trade secret would constitute an infringement of law other than that foreseen in this Directive or would be likely to harm consumers, such unlawful use should not be allowed.</p>
<p>(19) In order to avoid that a person who knowingly, or with reasonable grounds for knowing, unlawfully acquires, uses or discloses a trade secret benefit from such conduct</p>	<p>AS COM</p>	<p>(19) In order to avoid that a person who knowingly, or with reasonable grounds for knowing, unlawfully acquires, uses or discloses a trade secret benefit</p>	<p>[Technical drafting suggestion at the end. Recital on damages. Art.13.]</p> <p>(19) In order to avoid that a person who knowingly, or with reasonable</p>

<p>and to ensure that the injured trade secret holder, to the extent possible, is placed in the position in which he or she would have been had that conduct not taken place, it is necessary to provide for adequate compensation of the prejudice suffered as a result of the unlawful conduct. The amount of damages awarded to the injured holder of the trade secret should take account of all appropriate factors, such as loss of earnings incurred by the trade secret holder or unfair profits made by the infringer and, where appropriate, any moral prejudice caused to the trade secret holder. As an alternative, for example where, considering the intangible nature of trade secrets, it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as the royalties or fees which would have been due had the infringer requested authorisation to use the trade secret in question. The aim is not to introduce an obligation to provide for punitive damages, but to ensure compensation based on an objective criterion while taking account of the expenses incurred by the holder of the trade secret, such</p>		<p>from such conduct and to ensure that the injured trade secret holder, to the extent possible, is placed in the position in which he or she would have been had that conduct not taken place, it is necessary to provide for adequate compensation of the prejudice suffered as a result of the unlawful conduct. The amount of damages awarded to the injured holder of the trade secret should take account of all appropriate factors, such as loss of earnings incurred by the trade secret holder or unfair profits made by the infringer and, where appropriate, any moral prejudice caused to the trade secret holder. As an alternative, for example where, considering the intangible nature of trade secrets, it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as the royalties or fees which would have been due had the infringer requested authorisation to use the trade secret in question. The aim is not to introduce an obligation to provide for punitive damages, but to ensure compensation based on an objective criterion while taking</p>	<p>grounds for knowing, unlawfully acquires, uses or discloses a trade secret benefit from such conduct and to ensure that the injured trade secret holder, to the extent possible, is placed in the position in which he or she would have been had that conduct not taken place, it is necessary to provide for adequate compensation of the prejudice suffered as a result of the unlawful conduct. The amount of damages awarded to the injured holder of the trade secret should take account of all appropriate factors, such as loss of earnings incurred by the trade secret holder or unfair profits made by the infringer and, where appropriate, any moral prejudice caused to the trade secret holder. As an alternative, for example where, considering the intangible nature of trade secrets, it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as the royalties or fees which would have been due had the infringer requested authorisation to use the trade secret in question. The aim is not to introduce an obligation to provide for punitive damages, but to ensure compensation based on an</p>
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as the costs of identification and research.		account of the expenses incurred by the holder of the trade secret, such as the costs of identification and research. <u>This Directive shall not affect national principles on liability for violation of official duty.</u>	objective criterion while taking account of the expenses incurred by the holder of the trade secret, such as the costs of identification and research. <u>This Directive should not prevent Member States from providing in their rules of national law that the liability for damages of employees is restricted when they acted without intent shall not affect national principles on liability for violation of official duty.</u>
(20) To act as a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions, including where appropriate through prominent advertising, in cases concerning the unlawful acquisition, use or disclosure of trade secrets, as long as such publication does not result in the disclosure of the trade secret nor disproportionately affect the privacy and reputation of natural persons.	(20) To act as a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions, including where appropriate through prominent advertising, in cases concerning the unlawful acquisition, use or disclosure of trade secrets, as long as such publication does not result in the disclosure of the trade secret nor disproportionately affect the privacy and reputation of natural persons. <i>There is also a necessity to raise awareness, especially for SMEs, of the availability of redress and remedies in cases of unlawful acquisition, use or disclosure of trade secrets.</i>	AS COM	TEXT FROM OUTCOME of 2 nd technical meeting [Recital on publication measures. Art. 14.] (20) To act as a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions, including where appropriate through prominent advertising, in cases concerning the unlawful acquisition, use or disclosure of trade secrets, as long as such publication does not result in the disclosure of the trade secret nor disproportionately affect the privacy and reputation of natural persons.
(21) The effectiveness of the	AS COM	AS COM	[NO CHANGE TO COM position]

measures and remedies available to trade secret holders could be undermined in case of non-compliance with the relevant decisions adopted by the competent judicial authorities. For this reason, it is necessary to ensure that those authorities enjoy the appropriate powers of sanction.			[recital on sanctions – Art. 15]: (21) The effectiveness of the measures and remedies available to trade secret holders could be undermined in case of non-compliance with the relevant decisions adopted by the competent judicial authorities. For this reason, it is necessary to ensure that those authorities enjoy the appropriate powers of sanction.
(22) In order to facilitate the uniform application of the measures for the protection of trade secrets, it is appropriate to provide for systems of cooperation and the exchange of information as between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by Member States. In addition, in order to review whether these measures fulfil their intended objective, the Commission, assisted, as appropriate, by the European Observatory on the Infringements of Intellectual Property Rights, should examine the application of this Directive and the effectiveness of the national measures taken.	AS COM	AS COM	[NO CHANGE TO COM position]] Recital on monitoring and reporting. Articles 16 and 17.]: (22) In order to facilitate the uniform application of the measures for the protection of trade secrets, it is appropriate to provide for systems of cooperation and the exchange of information as between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by Member States. In addition, in order to review whether these measures fulfil their intended objective, the Commission, assisted, as appropriate, by the European Union Intellectual Property Office European Observatory on the Infringements of Intellectual Property Rights,

			should examine the application of this Directive and the effectiveness of the national measures taken.
(23) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to respect private and family life, the right to the protection of personal data, the freedom of expression and information, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to good administration, access to file and preservation of secrecy of business, the right to an effective remedy and to a fair trial and right of defence.	(23) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to respect private and family life, the right to the protection of personal data, the freedom of expression and information, <i>including media freedom</i> , the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to good administration, access to file and preservation of secrecy of business, the right to an effective remedy and to a fair trial and right of defence.	AS COM	[Technical comment: Recital on fundamental rights. This is a standard recital which lists the titles of the articles of the Charter] (23) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to respect private and family life, the right to the protection of personal data, the freedom of expression and information, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to good administration, access to file and preservation of secrecy of business, the right to an effective remedy and to a fair trial and right of defence.
(24) It is important that the rights to privacy and personal data protection of any person involved in litigation concerning the unlawful acquisition, use or disclosure of trade secrets and whose personal data are processed are respected. Directive 95/46/EC of the European Parliament and of	AS COM	(24) It is important that the rights to privacy and personal data protection <u>of any person whose personal data may be protected as a trade secret by the trade secret holder or</u> of any person involved in litigation concerning the unlawful acquisition, use or disclosure of trade secrets and	[COUNCIL proposal. See some technical changes following comments received from a political group] [Recital on data protection] (24) It is important that the rights to privacy and personal data protection <u>of any person whose personal data may be processed by the trade secret holder when</u>

<p>the Council governs the processing of personal data carried out in the Member States in the context of this Directive and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States.</p>		<p>whose personal data are processed are respected. Directive 95/46/EC of the European Parliament and of the Council* governs the processing of personal data carried out in the Member States in the context of this Directive and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. <u>Thus, this Directive should not affect the rights and obligations laid down in Directive 95/46/EC, in particular the rights of the data subject to access his or her personal data being processed and to obtain rectification, erasure or blocking of the data where it is incomplete or inaccurate and, where appropriate, the obligation to process sensitive data in accordance with Article 8(5) of Directive 95/46/EC.</u></p> <p>*Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281,</p>	<p><u>taking steps to keep information secret protected as a trade secret by the trade secret holder or</u> of any person involved in litigation concerning the unlawful acquisition, use or disclosure of trade secrets <u>under this Directive</u> and whose personal data are processed are respected. Directive 95/46/EC of the European Parliament and of the Council* governs the processing of personal data carried out in the Member States in the context of this Directive and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. <u>Thus, this Directive should not affect the rights and obligations laid down in Directive 95/46/EC, in particular the rights of the data subject to access his or her personal data being processed and to obtain rectification, erasure or blocking of the data where it is incomplete or inaccurate and, where appropriate, the obligation to process sensitive data in accordance with Article 8(5) of Directive 95/46/EC.</u></p>
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		23.11.1995, p 31).	*Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p 31).
(25) Since the objective of this Directive, to achieve a smooth functioning internal market through the establishment of a sufficient and comparable level of redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that same Article, this Directive does not go beyond what is necessary in order to achieve that objective.	AS COM	AS COM	[NO CHANGE TO COM position] [Recital on subsidiarity. Standard recital]: (25) Since the objective of this Directive, to achieve a smooth functioning internal market through the establishment of a sufficient and comparable level of redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that same Article, this Directive does not go beyond what is necessary in order to achieve that objective
(26) This Directive should not aim to establish harmonised rules for	AS COM	AS COM	[NO CHANGE TO COM position] [recital on negative scope: private

judicial cooperation, jurisdiction, the recognition and enforcement of judgments in civil and commercial matters, or deal with applicable law. Other Union instruments which govern such matters in general terms should, in principle, remain equally applicable to the field covered by this Directive.			international law, civil law, civil procedure law etc.] (26) This Directive should not aim to establish harmonised rules for judicial cooperation, jurisdiction, the recognition and enforcement of judgments in civil and commercial matters, or deal with applicable law. Other Union instruments which govern such matters in general terms should, in principle, remain equally applicable to the field covered by this Directive.
(27) This Directive should not affect the application of competition law rules, in particular Articles 101 and 102 of the Treaty on the Functioning of the European Union. The measures provided for in this Directive should not be used to restrict competition unduly in a manner contrary to that Treaty.	AS COM	AS COM	[NO CHANGE TO COM position] [recital on negative scope: antitrust law]: (27) This Directive should not affect the application of competition law rules, in particular Articles 101 and 102 of the Treaty on the Functioning of the European Union. The measures provided for in this Directive should not be used to restrict competition unduly in a manner contrary to that Treaty.
	<i>(27a) This Directive should not affect the freedom of movement for workers and the freedom of establishment, in particular as laid down in Articles 48 and 49 of the Treaty on the Functioning of the European Union and Article 15 of the Charter of Fundamental Rights of the</i>		[Council proposal, based on previous EP text. Recital on negative scope: workers' mobility] <u>(27a) This Directive should not be understood as restricting the freedom of establishment, the freedom of movement of workers or the mobility of workers as provided for in Union law. Nor is</u>

	<i>European Union. This should be taken into account when applying the measures, procedures and remedies provided for in this Directive.</i>		<u>it intended to affect the possibility of concluding non-competition agreements between employers and employees, in accordance with the applicable law.</u>
<p>(28) The measures adopted to protect trade secrets against their unlawful acquisition, disclosure and use should not affect the application of any other relevant law in other areas including intellectual property rights, privacy, access to documents and the law of contract. However, where the scope of application of Directive 2004/48/EC of the European Parliament and of the Council and the scope of this Directive overlap, this Directive takes precedence as <i>lex specialis</i>.</p> <p>* Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L157, 30.4.2004, p.45).</p>	<p>(28) The measures adopted to protect trade secrets against their unlawful acquisition, disclosure and use should not affect the application of any other relevant law in other areas including <i>protection of the environment and environmental liability, consumer protection, health and safety requirements, health protection,</i> intellectual property rights, privacy, access to documents and <i>information,</i> <i>and</i> the law of contract. However, where the scope of application of Directive 2004/48/EC of the European Parliament and of the Council¹ and the scope of this Directive overlap, this Directive takes precedence as <i>lex specialis</i>,</p> <p>* Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the</p>	As COM	<p>[Council proposal:]</p> <p>(28) The measures adopted to protect trade secrets against their unlawful acquisition, disclosure and use This Directive should not affect the application of any other relevant law in other areas, including intellectual property rights, privacy, access to documents and information, and the law of contract. However, where the scope of application of Directive 2004/48/EC of the European Parliament and of the Council² and the scope of this Directive overlap, this Directive takes precedence as <i>lex specialis</i>.</p> <p>* Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property</p>

¹ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).

² Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).

	enforcement of intellectual property rights (OJ L157, 30.4.2004, p.45).		rights (OJ L157, 30.4.2004, p.45).
		<p><u>(29) The European Data Protection Supervisor was consulted in accordance with Article 28(2)*of regulation (EC) No 45/2001 and delivered an opinion on 12 March 2014**</u></p> <p><u>* Regulation (EC) No 45/2001 No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1)</u></p> <p><u>**OJ C ...</u></p>	<p>TEXT FROM OUTCOME of 2nd technical meeting:</p> <p><u>(29) The European Data Protection Supervisor was consulted in accordance with Article 28(2)*of regulation (EC) No 45/2001 and delivered an opinion on 12 March 2014**.</u></p> <p><u>* Regulation (EC) No 45/2001 No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1)</u></p> <p><u>**OJ C ...</u></p>

