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From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 13 September 2012 16:58
To: (MARKT); L. (MARKT)
Cc: de Martinis, Lorenzo
Subject: Trade Secrets Study - Second Interim Study - Revised
Attachments: Appendix 15.2 Presentation of Dr. T. Respass.pdf; Appendix 15.3 Presentation of Prof L. Franzoni.pdf; Appendix 13 - Draft Survey Questionnaire.pdf; Appendix 15.1 Presentation of L. de Martinis.pdf

Fifth message

From: Gaudino, Francesca
Sent: Thursday, September 13, 2012 04:55 PM
To: @ec.europa.eu'; - @ec.europa.eu'
Cc: de Martinis, Lorenzo
Subject: Trade Secrets Study - Second Interim Study - Revised

Dear

Please find attached the Second Interim Study revised. I am also sending the Appendixes that have been modified, notably:

- Appendix 4: References;
- Appendix 14: Report on changes to First and Second Interim Study; and
- Appendix 16: Summary report on Brussels Conference (this is a new Appendix).

I will shortly send you for your records the other Appendixes that have not been modified, with separate messages in order to avoid issues in your receiving them.

If you wish to have any of the documents in word format, please let me know.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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Appendix 13

Draft Survey Questionnaire

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

Purpose of the Survey

On December 2011 the European Commission entrusted to Baker & McKenzie a project aimed at providing an in-depth analysis of the economic and legal scenario applying to trade secrets and confidential business information in the Internal Market.

The purpose of this survey, which is part of the project, is to collect information on how European-based companies manage trade secrets and confidential business information, their perception on their importance as a competitive factor in the respective business, and their opinions with regard protection and enforcement of trade secrets and confidential business information. The aim is to understand if the current legal framework of trade secrets and confidential business information, which involves different fields of national law (labour law, unfair competition law, criminal law, competition law), provides optimal protection and whether it provides obstacles to economic growth, competitiveness and cross-border business activities.

The European Commission is aware of the growing importance of trade secrets and confidential business information to the business sector and is concerned that companies throughout the single market are equally and properly protected against their theft. The Commission is also concerned about the cost incurred by businesses to protect their trade secrets and confidential business information. This Survey provides an opportunity for your business to improve the information available to the European Commission and to contribute to its policy decisions.

This questionnaire is of interest for your business if it has technical or commercial information related to the business which

- is not generally known or easily accessible,
- has economic value (i.e. it confers a competitive advantage to your business), and
- if disclosed to a competitor would be such to cause significant damage to your business.

In order to simplify the formulation of the following questions, in this questionnaire we will use the expression "confidential business information or trade secrets" (TS/CBI) to refer to that type of information. Confidential business information or trade secrets can therefore include a broad variety of information, ranging from hard technical knowledge (e.g., software, product design), to production know-how (e.g., techniques to produce quality products and services efficiently), to soft market information (results of marketing studies, price and date of launching a new product, etc.). The Commission would like to know whether your business fears that this information is at risk of being stolen by third parties, whether the current legal regime provides sufficient remedies against such a risk, and whether your business would benefit from greater harmonization of trade secrets and confidential business information laws across member states.

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

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

Thank you in advance for your participation in this Survey.

Structure of the Survey

The survey is composed of the following sections.

Section A – Your trade secrets

Section B – Threats to your trade secrets

Section C – Protection and misappropriation of your trade secrets

Section D – Litigation to protect and defend your trade secrets

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

Section F – Your Company

Section G – Additional information

Instructions for Completion

Please select the option – or options where expressly specified that multiple choices are allowed – that best represent(s) your position.

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

If your company is part of an enterprise group, please answer all further questions only in relation to the company for which you are responding. Do not include results for other subsidiaries or parent enterprises.

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

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

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

Thank you for your cooperation!

PLEASE INSERT YOUR CODE: _____

Section A - Your Trade Secrets

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

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

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

A.2 Could you please rank the value of TS/CBI to your company in the following areas:

- | | | | |
|---|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Customer list | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Supplier list | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Manufacturing technique | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Product technology | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Formulae and recipes | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Software | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Procedural know-how | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Organizational processes | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Research and development information | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Undisclosed financial data | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Sales and service information | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Business/financial planning | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Commercial bids and contracts | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Recruitment plans | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Customer profiling/market surveys | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Customer surveys/supplier assessment reports | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Marketing/Advertising strategies and plan | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

A.3 Is it common practice in your business market to have network agreements or other kinds of contract arrangements to share innovations between companies?

- ☐ Yes ☐ No

A.4 To what extent does the competitiveness/innovative growth performance of your company rely on information and knowledge that it tries to keep confidential?

- ☐ TS/CBI are essential for the competitiveness/innovative growth performance of my company
- ☐ TS/CBI are important for the competitiveness/innovative growth performance of my company

- ☐ TS/CBI have moderate importance for the competitiveness/innovative growth performance of my company
- ☐ TS/CBI are not important for the competitiveness/innovative growth performance of my company

A.5 To what extent does your company rely on other intellectual property rights?

- | | | | |
|------------|------------------------------|---------------------------------|-------------------------------|
| Copyrights | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| Patents | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| Trademarks | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| Designs | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| Other | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

A.6 Reasons for your company for relying on TS/CBI to protect knowledge that might be protected under other IP rights - e.g. patents, designs (Check all boxes that apply)

- ☐ Do not want to disclose information ☐ Low ☐ Medium ☐ High
- ☐ Cost to obtain and manage other IP rights ☐ Low ☐ Medium ☐ High
- ☐ Time to obtain other IP protection (patent, other) ☐ Low ☐ Medium ☐ High
- ☐ Potential lack of eligibility ☐ Low ☐ Medium ☐ High
- ☐ Limited lifecycle of relevant knowledge (expires prior to time needed to obtain registered IP protection, e.g. patent) ☐ Low ☐ Medium ☐ High
- ☐ Other, please specify _____ ☐ Low ☐ Medium ☐ High

A.7 Does your company share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements?

- ☐ Yes. If yes, how often?
 - ☐ Very often
 - ☐ Often
 - ☐ Occasionally
 - ☐ Rarely
- ☐ No. If no, why not?
 - ☐ Strategic reasons
 - ☐ No demand/supply
 - ☐ Fear of losing secrecy by misappropriation, unauthorized disclosure, etc.
 - ☐ Fear of not being the sole owner
 - ☐ Other, please specify _____

Section B – Threats to your trade secrets

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

- | | | | |
|--|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Clients or customers | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Suppliers of equipment, materials, services or software | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Reverse engineering | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

- | | | | |
|---|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Employees mobility | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Conferences, trade fairs, exhibitions | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Due diligence on business partners | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Scientific journals and trade/technical publications | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Internet posting and disclosures | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Misappropriation and/or espionage | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Divulgarion requested by regulatory authorities | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Other (please specify)_____ | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

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

- | | | | |
|---|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Current Employees | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Former Employees | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Hackers | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Competitors | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Visitors | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Private customers | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Public administration customers | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Consultants/internals | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Suppliers/business partners | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Employees of industry regulators | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Investigation companies | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Employees of service providers (cleaning companies, electrician, etc.) | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Other (please specify)_____ | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

B.3 Does your company believe that your trade secrets are more vulnerable to misappropriation in some EU Member States than in others?

- ☐ Yes
☐ Yes, but the greater threat comes from third countries

If yes [to any of the two above], in which EU Member States does your company believe that your trade secrets are safer? _____

- ☐ No, there is no significant difference between the EU Member States
☐ No, there is no significant difference between the EU Member States and in any case, the greater threat comes from third countries"

B.4 Does your company believe that the risk of exposure to TS/CBI misappropriation has increased in the last 10 years?

- ☐ No
☐ Yes, because of one or more of following reasons:
☐ business is increasingly conducted with recourse to outsourcing, consultancy, alliances and partnerships between companies, thus exposure to risk of TS/CBI misappropriation is higher

- ☐ Technology and telecommunications (computers, Internet, software, etc.) have made it easier and faster to copy, store and take away huge amount of documents and information
- ☐ In a global economy, competition is so strong that some companies are more willing to do whatever it takes to survive and/or gain competitiveness and market share
- ☐ Others (please specify) _____

Section C – Protection and misappropriation of your trade secrets

C.1 What types of precautions are employed by your company to protect TS/CBI and how effective are they? (Check all boxes that apply)

- ☐ Confidentiality agreements to avoid misappropriation by employees
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Covenants-not-to-compete to avoid misappropriation by former employees and business partners
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Computer safeguards
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Physical restrictions to access (locks, empty desk policies)
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Access limitations policies (e.g. access to limited number of persons; sharing of minimum necessary amount of information)
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Compartmentalizing information
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Increase of salaries and/or benefits, including awards of stock options, to retain key employees
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Screening of potential partners, interns, etc. to avoid high risk profiles
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Other, please specify _____
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ None

C.2 If your company is present in more than one EU country, does your company apply different TS/CBI protection measures according to the different country where your company trades in?

- ☐ Yes, with regard to any country, whether in the EU or outside
- ☐ Yes, only with regard to non EU countries
- ☐ No
- ☐ Not concerned

C.3 Did your company suffer attempts of misappropriation of TS/CBI during the last 10 years?

- ☐ None that we are aware of (Please go to question D.1)

- ☐ Yes, within the EU
 - ☐ 1 to 5 times ☐ 6 to 10 times ☐ more than 10 times
- ☐ Yes, outside the EU
 - ☐ 1 to 5 times ☐ 6 to 10 times ☐ more than 10 times

C.4 Attempts to misappropriate TS/CBI of your company were carried out by:

- ☐ Employees ☐ never ☐ once ☐ several times
- ☐ Former employees ☐ never ☐ once ☐ several times
- ☐ Hackers ☐ never ☐ once ☐ several times
- ☐ Competitors ☐ never ☐ once ☐ several times
- ☐ Visitors ☐ never ☐ once ☐ several times
- ☐ Private customers ☐ never ☐ once ☐ several times
- ☐ Public administration customers ☐ never ☐ once ☐ several times
- ☐ Investigation companies ☐ never ☐ once ☐ several times
- ☐ Consultants/internals ☐ never ☐ once ☐ several times
- ☐ Suppliers/business partners ☐ never ☐ once ☐ several times
- ☐ Employees of industry regulators ☐ never ☐ once ☐ several times
- ☐ Employees of investigation companies ☐ never ☐ once ☐ several times
- ☐ Service providers (cleaning companies, electrician, etc.)
 - ☐ never ☐ once ☐ several times
- ☐ Unidentified parties ☐ never ☐ once ☐ several times
- ☐ Other (please specify) ☐ never ☐ once ☐ several times

C.5 Please indicate the consequences suffered by your company as a result of the attempts and successful acts of misappropriation:

- ☐ Loss of sales/clients/contracts
- ☐ Loss of jobs
- ☐ Costs in investigating
- ☐ Costs in negotiating a settlement
- ☐ Costs in prosecuting and litigating
- ☐ Bad publicity or damage to the company's image, reputation and reliability
- ☐ Other (please specify) _____

C.6 Would it be possible to calculate the amount of the damages effectively suffered for the cases of attempts and successful acts of misappropriation that you have suffered in the last 10 years?

If yes, provide an estimate figure (in Euros): _____

Section D – Litigation to protect and defend your trade secrets

D.1 Has your company been involved in litigation involving trade TS/CBI during the last 10 years?

- ☐ Yes, in the EU
 - If yes, how often ☐ once ☐ from 2 to 5 times ☐ more than 5 times

- ☐ Yes, outside the EU
- ☐ No that I am aware of

D.2 If your company experienced misappropriation of TS/CBI, in the EU, did your company seek legal remedies?

- ☐ Yes, always
- ☐ Yes, only in some cases
- ☐ No (Please go to question D.5)

D.3 If your company sought legal remedies against misappropriation within the EU, was it able to get (Check all boxes that apply):

- ☐ Court orders stopping in your/other countries unlawful use of misappropriated trade secrets
- ☐ Court orders to search and secure evidence of misappropriation
- ☐ Award of damages or other monetary compensation
- ☐ Criminal sanctions against perpetrator
- ☐ Customs seizure at EU borders of infringing goods
- ☐ Destruction of infringing goods produced using misappropriated trade secrets
- ☐ Publication of the Court decisions on the press/media
- ☐ None of the above

D.4 In case of litigation within the EU, if your company obtained an order from a court in an EU Member State to stop the use of misappropriated TS/CBI in the territory of that Member State, did your company try to obtain a similar order in other Member States?

- ☐ Yes, by trying to obtain the enforcement of the first order in the courts of other Member States
- ☐ Yes, by starting separate legal action in the other relevant Member States
- ☐ No. If no, why not? (Please specify) _____

D.5 When your company decided **not** to seek legal remedies against misappropriation within the EU, what was the reason?

- ☐ Low value of the TS/CBI in question or of damages caused ☐ Low ☐ Medium ☐ High
- ☐ Preference for out-of-Court settlement ☐ Low ☐ Medium ☐ High
- ☐ Lack of trust on the judicial system of the relevant Member State
- ☐ Fear of losing secrets/CBI ☐ Low ☐ Medium ☐ High
- ☐ Insufficient evidence to meet the standards of proof in court or other inability to prove misappropriation ☐ Low ☐ Medium ☐ High
- ☐ Litigation cost ☐ Low ☐ Medium ☐ High
- ☐ Inability to quantify damages ☐ Low ☐ Medium ☐ High

- ☐ Inability to identify offender ☐ Low ☐ Medium ☐ High
- ☐ Lack of effective legal remedies ☐ Low ☐ Medium ☐ High
- ☐ Duration of litigation ☐ Low ☐ Medium ☐ High
- ☐ Difficulties in establishing the right jurisdiction ☐ Low ☐ Medium ☐ High
- ☐ Other, please specify _____ ☐ Low ☐ Medium ☐ High

D.6 Has your company experienced, as defendant, abusive litigation by a competitor trying to intimidate your company?

with a false accusation of misappropriation of TS/CBI in the past 10 years?

- ☐ Yes, in the EU
If yes, how often: ☐ once ☐ between 2 and 5 times ☐ more than 5 times
- ☐ Yes, outside the EU
- ☐ No, in any country

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

E.1 In your opinion, if the European Commission were to undertake any legislative action with a view to harmonise the legislation of the EU Member States on protection of TS/CBI, it should focus on the following, also in terms of priority:

- ☐ Reduction in the number of forums where TS/CBI cases may be litigated
☐ Low ☐ Medium ☐ High
- ☐ Possibility of protecting TS/CBI effectively and efficiently in all Member States
☐ Low ☐ Medium ☐ High
- ☐ Reduction in litigation costs
☐ Low ☐ Medium ☐ High
- ☐ Saving in internal TS/CBI management programs
☐ Low ☐ Medium ☐ High
- ☐ Uniformity of employee contract terms with respect to TS/CBI
☐ Low ☐ Medium ☐ High
- ☐ Possibility of seizing/stopping at the EU borders of products manufactured using misappropriated TS/CBI
☐ Low ☐ Medium ☐ High
- ☐ No opinion

E.2 If the European Commission was to undertake any legislative action with a view to harmonise the legislation of the EU Member States on the protection of TS/CBI, establishing a sound, coherent and efficient legal frame work what would be the possible benefits:

- ☐ Less tendency for certain companies or persons to engage in trade secrets

Misappropriation

- ☐ More security in business transactions (agreements, collaborations) involving sharing/transferring/licensing of CBI/TS, and therefore more willingness to share or transfer TS/CBI under confidential clauses
- ☐ Lowering transactions costs involving sharing/transferring/licensing across several Member States
- ☐ More incentive to invest resources on research and development by providing more assurance that the investment could be recovered
- ☐ No perceived benefits

E.3 Would your company benefit from EU legal intervention establishing uniform rules on the following measures:

- ☐ Court orders stopping at EU level unlawful use of misappropriated TS/CBI
 - ☐ Low ☐ Medium ☐ High
- ☐ Investigative power at EU level to identify parties responsible of TS/CBI misappropriation ☐ Low ☐ Medium ☐ High
- ☐ Criminal sanctions for parties responsible of TS/CBI misappropriation
 - ☐ Low ☐ Medium ☐ High
- ☐ Damage awards to parties victim of TS/CBI misappropriation
 - ☐ Low ☐ Medium ☐ High
- ☐ Enforcement at EU level of no-compete clauses (preventing former employers to use the acknowledged TS/CBI to compete with former employer)
 - ☐ Low ☐ Medium ☐ High
- ☐ Enforcement at EU level of non-disclosure agreements (preventing contractors/employees to divulge TS/CBI)
 - ☐ Low ☐ Medium ☐ High
- ☐ Unified court proceeding ☐ Low ☐ Medium ☐ High
- ☐ Other, please specify _____ ☐ Low ☐ Medium ☐ High

E.4 Do you see any negative impact on your company or for the economy if an EU legislative initiative is proposed by the European Commission in the field of TS/CBI?

- ☐ Yes, negative effects perceived; please specify _____
- ☐ No negative effects perceived

Section F – Your Company

PLEASE INSERT YOUR CODE: _____

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

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

☐ Yes

☐ No

F.3 Your country (from computer list)

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

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

F.5 The market in which your company operates is mainly driven by
(Please check only one):

☐ Product innovation - e.g. competition based on development and launch of new products/services

☐ Process innovation - e.g. competition based on production/organization improvement to provide existing products/services at a lower cost/price

F.6 Is your business market characterized by products/services or process with a short lifecycle (less than 2 years)?

☐ Yes

☐ No

F.7 Please estimate your company's total turnover for the year 2011 - in millions of Euros and excluding VAT

€ _____

F.8 Please estimate your company's average number of employees for the year 2011

F.9 With respect to Research & Development (R&D) activities, rank in level internal R&D activities and acquisition of external R&D

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

Section G – Additional information

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

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

Position in the company: _____

E-mail address (optional): _____

Thank you for taking the time to complete this survey.



**For documents 61b, 61c and 61d, see docs. 134c, 134d
and 134e :**

Published in website



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(GROW)

From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 19 September 2012 19:09
To:
Cc: ; ; MARKT); ; MARKT);
 ; ; @hksstrategies.com;
Subject: RE: RE: RE: trade secrets survey - working session

Dear ,

I agree with your proposed list of participants and timing.

Kind regards,
 Francesca

From: [mailto: @skynet.be]
Sent: Tuesday, September 18, 2012 10:27 PM
To: Gaudino, Francesca
Cc: @ec.europa.eu; @ec.europa.eu; ; @hkstrategies.com;
 @skynet.be;
Subject: RE: RE: RE: trade secrets survey - working session
Importance: High

Dear Francesca,

I can confirm that , president of IFRA, will be delighted to host our working session on October 4th.
 This will take place in IFRA office, avenue des Arts, 6, 1210 Brussels.
 The coalition will be represented by (DuPont), (Cefic), or
 (TSIC), and myself (IFRA).
 As the session will be in Brussels, I expect and to attend as well.
 The session could start at 9.30 to finish at 12.30 with a sandwich lunch.

Could you be so kind to let us know if you agree with this.
 We would welcome any suggestion from your side.

Best regards

De : Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Envoyé : mercredi 12 septembre 2012 03:04
À : @skynet.be
Cc : @ec.europa.eu; @ec.europa.eu
Objet : R: RE: RE: trade secrets survey - working session

Thanks very much,

Kind regards,
 Francesca

Da: [mailto: @skynet.be]
Inviato: Tuesday, September 11, 2012 10:24 PM
A: Gaudino, Francesca
Cc: @ec.europa.eu < @ec.europa.eu>; @ec.europa.eu

< _____@ec.europa.eu>; _____@skynet.be < _____@skynet.be>

Oggetto: RE: RE: trade secrets survey - working session

Dear Francesca,
I will make a proposal.
Eventually, it will be the office of IFRA in Brussels.
Best regards.

De : Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]

Envoyé : mardi 11 septembre 2012 12:43

À :

Cc : _____@ec.europa.eu; _____@ec.europa.eu

Objet : RE: RE: trade secrets survey - working session

Dear

The meeting will not take place at the Commission offices so if you can arrange for a meeting room, that would be much appreciated.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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

From: _____ [mailto: _____@skynet.be]

Sent: Tuesday, September 11, 2012 10:21 AM

To: Gaudino, Francesca

Cc: _____@ec.europa.eu; _____@ec.europa.eu; _____@skynet.be

Subject: RE: RE: trade secrets survey - working session

Importance: High

Many thanks Francesca,

I will inform the colleagues about this meeting for them to block the date if they want to contribute.

I assume that the meeting will take place in the EU Commission premises.

If this would not be the case, could you _____ let me know. We would be delighted to offer you a meeting room for the session.

Best regards

De : Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Envoyé : lundi 10 septembre 2012 22:46
À : @skynet.be
Cc : @ec.europa.eu; @ec.europa.eu
Objet : R: RE: trade secrets survey - working session

Dear

Sorry for not mentioning it in my earlier message: the working session should be held in Brussels.

Kind regards,
Francesca

Da : [mailto: @skynet.be]
Inviato: Monday, September 10, 2012 09:58 PM
A: Gaudino, Francesca
Cc : @ec.europa.eu < @ec.europa.eu>; @ec.europa.eu
< @ec.europa.eu>; @skynet.be < @skynet.be>
Oggetto: RE: trade secrets survey - working session

Dear Francesca,
Many thanks for your reply.
A working session on October 4th would be perfect.
Would you organize it in Brussels or in Italy.
Many thanks for letting me know.
Best regards

De : Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Envoyé : lundi 10 septembre 2012 20:15
À :
Cc : @ec.europa.eu; @ec.europa.eu
Objet : RE: trade secrets survey - working session

Dear

We were thinking to have a meeting with you and other interested members of the Coalition on the survey questionnaire at the beginning of October.

We propose to meet in the morning of October 4, planning to have a working session that runs for the whole morning.

Please let us know if this time suits you.

Kind regards,
Francesca

From: [mailto: @skynet.be]
Sent: Monday, September 10, 2012 02:57 PM
To: Gaudino, Francesca
Cc: @ec.europa.eu; @ec.europa.eu; @skynet.be
Subject: RE: trade secrets survey - working session

Dear Francesca,
I hope you are well and your stay in Asia was fruitful.
As suggested in your previous mail, I would like to catch-up with you on the finalization of the survey preparation.

I am now traveling to Strasbourg for the session of the European Parliament. Nevertheless, don't hesitate to send me a mail or call on my mobile (00 32
Our offer for a working session is confirmed preferably in Brussels if this is possible for you. Otherwise, feel free to propose a place and some dates that we can organize ourselves.
Best regards

De : Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]

Envoyé : mercredi 29 août 2012 01:52

À : [@skynet.be](mailto:skynet.be)

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

Objet : R: trade secrets survey - working session

Dear

I just landed in Hong Kong for a series of conferences where I've to speak on cloud computing/privacy issues and will be back in Milan on September 10.

I confirm the pilot has started. As to meeting to discuss the final questionnaire, we can discuss on this when I'm back and the pilot will be a more mature stage.

Kind regards,
Francesca

Da : [<mailto:skynet.be>]

Inviato: Tuesday, August 28, 2012 05:00 PM

A: Gaudino, Francesca

Cc: [@ec.europa.eu](mailto:ec.europa.eu) <[@ec.europa.eu](mailto:ec.europa.eu)>; [@skynet.be](mailto:skynet.be) <[@skynet.be](mailto:skynet.be)>; [@ec.europa.eu](mailto:ec.europa.eu) <[@ec.europa.eu](mailto:ec.europa.eu)>

Oggetto: trade secrets survey - working session

Dear Francesca,

I hope you are well and had an enjoyable (but short) break.

I have been trying to call you without success. So, my mail.

I understand that you started the pilot last week.

When we discussed in July, we agreed that it would be useful to have a working session after the pilot and before finalizing the questionnaire.

I shared this idea with skynet.be who is fully supportive. He suggested that you propose some dates for such session ideally in Brussels. This would give the opportunity to the EU Commission to participate as well as some members of the coalition.

If you don't think that you could come to Brussels, I could come to Milan.

Could you please give me a sign or call me (00 32

Many thanks in advance.

Best regards

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100

100

100

63



(GROW)

63

From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 02 October 2012 17:20
To: (MARKT)
Cc: (MARKT); de Martinis, Lorenzo;
(MARKT); (MARKT)
Subject: RE: RE: Trade Secrets Study - Timescale
Attachments: Pilot Survey Report.docx; Pilot Survey Report.pdf

Dear

I was in a conference and could not take your call; apologize for this.
Attached you can find the word and pdf version of the Report on the Pilot Survey.


The Coalition asked us to share this Report with them before the Thursday meeting. We replied that this document owns to you – the Commission - as a deliverable of the work we are performing for you. We explained that we can discuss the content but cannot provide copy of the Report. Please let us know if you agree with this approach or if instead you authorize us to share the Report with the Coalition.

Looking forward to our upcoming meeting.

Best regards,
Francesca

Francesca Gaudino
Counsel

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

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

From: Dec.europa.eu [<mailto:Dec.europa.eu>]
Sent: martedì 2 ottobre 2012 16:41
To: Gaudino, Francesca
Cc: Dec.europa.eu; de Martinis, Lorenzo; Dec.europa.eu;
Dec.europa.eu
Subject: RE: RE: Trade Secrets Study - Timescale

Dear Francesca,

I have tried to call you but I have not reached you.

We would need to receive the pilot test report as soon as possible; we would need to read it before we can discuss it with you in our meeting of this Thursday;

Regards

EUROPEAN COMMISSION
Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2, B-1049 Brussels
Tel. (+32) 22 99 99 99
<mailto:ec.europa.eu>

From: Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]
Sent: Wednesday, August 29, 2012 2:07 AM
To: (MARKT)
Cc: (MARKT); de Martinis, Lorenzo; (MARKT);
(MARKT)
Subject: R: RE: Trade Secrets Study - Timescale

Dear ,

I think I would be more reasonable as deadline for the report on the pilot survey. For the rest I tend to agree on your envisaged time scale, with efforts from our end to deliver the final study.

I'm on a business trip (just landed to Hong Kong) with intermittent access to my mail and will be back on Monday, September 10. I propose to then discuss this in details at your convenience.

Kind regards,
Francesca

Da: @ec.europa.eu [<mailto:ec.europa.eu>]; @ec.europa.eu]
Inviato: Tuesday, August 28, 2012 03:16 PM
A: Gaudino, Francesca
Cc: @ec.europa.eu <@ec.europa.eu>; de Martinis, Lorenzo; @ec.europa.eu <@ec.europa.eu>; @ec.europa.eu
<@ec.europa.eu>
Oggetto: RE: Trade Secrets Study - Timescale

51

For the rest of the document, see document 51



63a

**Study on Trade Secrets and Confidential Business Information in the Internal Market:
Report on Pilot Survey**

Prepared for the European Commission

Contract number: MARKT/2011/128/D

(not for distribution)

Date: 30 September 2012

For document 63a (except first page), see doc. 134b :

Published in website



64



GROW)

64

From: (MARKT)
Sent: 02 October 2012 18:02
To: 'Gaudino, Francesca'
Cc: (MARKT); de Martinis, Lorenzo;
(MARKT); (MARKT)
Subject: RE: RE: Trade Secrets Study - Timescale

Dear Francesca,

Thanks for reacting so fast

I think that in order for your meeting with the Coalition to be fruitful it is better if you make this report available to them.

However, the following must be made clear:

- This is a draft, we – in DG MARKT - are analysing it in parallel and therefore at this stage it does not have our approval;
- The report will not in principle be published;
- Members of the Coalition should abstain from quoting, cite or circulate the report or parts of it

Please state expressly in the first page (or in all pages using watermark) that it is a draft

Our meeting on Thursday is scheduled for 14:00 till 16:00.

We do not foresee coming with you to the meeting with the Coalition, but we are happy to hear from you their comments and suggestions.

Looking forward to see you Thursday

Regards

EUROPEAN COMMISSION
Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2, B-1049 Brussels
Tel. (+32) 22 9 99 99 99
<mailto:francesca.gaudino@ec.europa.eu>

From: Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]
Sent: Tuesday, October 02, 2012 5:20 PM
To: (MARKT)
Cc: (MARKT); de Martinis, Lorenzo; (MARKT);
(MARKT)
Subject: RE: RE: Trade Secrets Study - Timescale

Dear

I was in a conference and could not take your call; apologize for this.
Attached you can find the word and pdf version of the Report on the Pilot Survey.

The Coalition asked us to share this Report with them before the Thursday meeting. We replied that this document owns to you – the Commission - as a deliverable of the work we are performing for you. We explained that we can discuss the content but cannot provide copy of the Report. Please let us know if you agree with this approach or if instead you authorize us to share the Report with the Coalition.

Looking forward to our upcoming meeting.

Best regards,
Francesca

Francesca Gaudino
Counsel

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



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

From: [redacted] <[redacted]@ec.europa.eu [mailto:[redacted]]>
Sent: martedì 2 ottobre 2012 16:41
To: Gaudino, Francesca
Cc: [redacted] <[redacted]@ec.europa.eu>; de Martinis, Lorenzo; [redacted] <[redacted]@ec.europa.eu>; [redacted] <[redacted]@ec.europa.eu>
Subject: RE: RE: Trade Secrets Study - Timescale

Dear Francesca,

I have tried to call you but I have not reached you.

We would need to receive the pilot test report as soon as possible; we would need to read it before we can discuss it with you in our meeting of this Thursday;

Regards

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

From: Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Sent: Wednesday, August 29, 2012 2:07 AM
To: [redacted] (MARKT)
Cc: E [redacted]; de Martinis, Lorenzo; [redacted] (MARKT); [redacted] (MARKT)
Subject: R: RE: Trade Secrets Study - Timescale

I think [redacted] would be more reasonable as deadline for the report on the pilot survey. For the rest I tend to agree on your envisaged time scale, with efforts from our end to deliver the final study.

I'm on a business trip (just landed to Hong Kong) with intermittent access to my mail and will be back on Monday, September 10. I propose to then discuss this in details at your convenience.

Kind regards,
Francesca

Da: [redacted] <[redacted]@ec.europa.eu [mailto:[redacted]@ec.europa.eu]>
Inviato: Tuesday, August 28, 2012 03:16 PM
A: Gaudino, Francesca
Cc: [redacted] <[redacted]@ec.europa.eu <[redacted]@ec.europa.eu>; de Martinis, Lorenzo; [redacted] <[redacted]@ec.europa.eu <[redacted]@ec.europa.eu>; [redacted] <[redacted]@ec.europa.eu <[redacted]@ec.europa.eu>
Oggetto: RE: Trade Secrets Study - Timescale

Dear Francesca,

51

For the rest of the document, see document 51



65



(GROW)

65

From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 03 October 2012 13:04
To: (MARKT)
Cc: (MARKT); (MARKT); (MARKT);
(MARKT); (MARKT); de Martinis, Lorenzo
Subject: RE: The introductory webpage for the pilot survey
Attachments: Appendix 13 - Draft Survey Questionnaire.doc

Dear

Please find attached the survey questionnaire with the introductory section that we suggest to amend.

Kind regards,
Francesca

From: @ec.europa.eu [mailto: @ec.europa.eu]
Sent: Wednesday, October 03, 2012 11:36 AM
To: Gaudino, Francesca; de Martinis, Lorenzo
Cc: @ec.europa.eu; @ec.europa.eu; @ec.europa.eu;
@ec.europa.eu
Subject: The introductory webpage for the pilot survey

Dear Francesca, dear Lorenzo

One of your suggestions in the report is to improve the introductory webpage to the survey.

I am not sure we have it; could you please to us a link or the relevant text?

Best regards

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

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Appendix 13

Draft Survey Questionnaire

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

Purpose of the Survey

On December 2011 the European Commission entrusted to Baker & McKenzie a project aimed at providing an in-depth analysis of the economic and legal scenario applying to trade secrets and confidential business information in the Internal Market.

The purpose of this survey, which is part of the project, is to collect information on how European-based companies manage trade secrets and confidential business information, their perception on their importance as a competitive factor in the respective business, and their opinions with regard protection and enforcement of trade secrets and confidential business information. The aim is to understand if the current legal framework of trade secrets and confidential business information, which involves different fields of national law (labour law, unfair competition law, criminal law, competition law), provides optimal protection and whether it provides obstacles to economic growth, competitiveness and cross-border business activities.

The European Commission is aware of the growing importance of trade secrets and confidential business information to the business sector and is concerned that companies throughout the single market are equally and properly protected against their theft. The Commission is also concerned about the cost incurred by businesses to protect their trade secrets and confidential business information. This Survey provides an opportunity for your business to improve the information available to the European Commission and to contribute to its policy decisions.

This questionnaire is of interest for your business if it has technical or commercial information related to the business which

- is not generally known or easily accessible,
- has economic value (i.e. it confers a competitive advantage to your business), and
- if disclosed to a competitor would be such to cause significant damage to your business.

In order to simplify the formulation of the following questions, in this questionnaire we will use the expression "confidential business information or trade secrets" (TS/CBI) to refer to that type of information. Confidential business information or trade secrets can therefore include a broad variety of information, ranging from hard technical knowledge (e.g., software, product design), to production know-how (e.g., techniques to produce quality products and services efficiently), to soft market information (results of marketing studies, price and date of launching a new product, etc.). The Commission would like to know whether your business fears that this information is at risk of being stolen by third parties, whether the current legal regime provides sufficient remedies against such a risk, and whether your business would benefit from greater harmonization of trade secrets and confidential business information laws across member states.

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

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

Thank you in advance for your participation in this Survey.

65a

Structure of the Survey

The survey is composed of the following sections.

Section A – Your trade secrets

Section B – Threats to your trade secrets

Section C – Protection and misappropriation of your trade secrets

Section D – Litigation to protect and defend your trade secrets

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

Section F – Your Company

Section G – Additional information

Instructions for Completion

Please select the option – or options where expressly specified that multiple choices are allowed – that best represent(s) your position.

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

If your company is part of an enterprise group, please answer all further questions only in relation to the company for which you are responding. Do not include results for other subsidiaries or parent enterprises.

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

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

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

Thank you for your cooperation!

PLEASE INSERT YOUR CODE: _____

Section A – Your Trade Secrets

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

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

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

A.2 Could you please rank the value of TS/CBI to your company in the following areas:

- | | | | |
|---|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Customer list | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Supplier list | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Manufacturing technique | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Product technology | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Formulae and recipes | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Software | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Procedural know-how | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Organizational processes | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Research and development information | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Undisclosed financial data | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Sales and service information | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Business/financial planning | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Commercial bids and contracts | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Recruitment plans | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Customer profiling/market surveys | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Customer surveys/supplier assessment reports | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Marketing/Advertising strategies and plan | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

A.3 Is it common practice in your business market to have network agreements or other kinds of contract arrangements to share innovations between companies?

- ☐ Yes ☐ No

A.4 To what extent does the competitiveness/innovative growth performance of your company rely on information and knowledge that it tries to keep confidential?

- ☐ TS/CBI are essential for the competitiveness/innovative growth performance of my company
- ☐ TS/CBI are important for the competitiveness/innovative growth performance of my company

- ☐ TS/CBI have moderate importance for the competitiveness/innovative growth performance of my company
- ☐ TS/CBI are not important for the competitiveness/innovative growth performance of my company

A.5 To what extent does your company rely on other intellectual property rights?

- | | | | |
|------------|------------------------------|---------------------------------|-------------------------------|
| Copyrights | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| Patents | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| Trademarks | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| Designs | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| Other | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

A.6 Reasons for your company for relying on TS/CBI to protect knowledge that might be protected under other IP rights - e.g. patents, designs (Check all boxes that apply)

- | | | | |
|---|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Do not want to disclose information | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Cost to obtain and manage other IP rights | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Time to obtain other IP protection (patent, other) | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Potential lack of eligibility | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Limited lifecycle of relevant knowledge (expires prior to time needed to obtain registered IP protection, e.g. patent) | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Other, please specify _____ | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

A.7 Does your company share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements?

- ☐ Yes. If yes, how often?
- | |
|---------------------------------------|
| <input type="checkbox"/> Very often |
| <input type="checkbox"/> Often |
| <input type="checkbox"/> Occasionally |
| <input type="checkbox"/> Rarely |
- ☐ No. If no, why not?
- | |
|--|
| <input type="checkbox"/> Strategic reasons |
| <input type="checkbox"/> No demand/supply |
| <input type="checkbox"/> Fear of losing secrecy by misappropriation, unauthorized disclosure, etc. |
| <input type="checkbox"/> Fear of not being the sole owner |
| <input type="checkbox"/> Other, please specify _____ |

Section B – Threats to your trade secrets

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

- | | | | |
|--|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Clients or customers | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Suppliers of equipment, materials, services or software | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Reverse engineering | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

- | | | | |
|---|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Employees mobility | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Conferences, trade fairs, exhibitions | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Due diligence on business partners | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Scientific journals and trade/technical publications | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

- | | | | |
|--|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Internet posting and disclosures | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Misappropriation and/or espionage | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

- | | | | |
|--|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Divulgarion requested by regulatory authorities | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
|--|------------------------------|---------------------------------|-------------------------------|

- | | | | |
|---|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Other (please specify) _____ | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
|---|------------------------------|---------------------------------|-------------------------------|

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

- | | | | |
|---|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Current Employees | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Former Employees | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Hackers | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Competitors | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Visitors | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Private customers | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Public administration customers | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Consultants/internals | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Suppliers/business partners | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Employees of industry regulators | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Investigation companies | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Employees of service providers (cleaning companies, electrician, etc.) | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Other (please specify) _____ | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

B.3 Does your company believe that your trade secrets are more vulnerable to misappropriation in some EU Member States than in others?

- ☐ Yes
- ☐ Yes, but the greater threat comes from third countries

If yes [to any of the two above], in which EU Member States does your company believe that your trade secrets are safer? _____

- ☐ No, there is no significant difference between the EU Member States
- ☐ No, there is no significant difference between the EU Member States and in any case, the greater threat comes from third countries"

B.4 Does your company believe that the risk of exposure to TS/CBI misappropriation has increased in the last 10 years?

- ☐ No
- ☐ Yes, because of one or more of following reasons:
- ☐ business is increasingly conducted with recourse to outsourcing, consultancy, alliances and partnerships between companies, thus exposure to risk of TS/CBI misappropriation is higher

☐ Technology and telecommunications (computers, Internet, software, etc.) have made it easier and faster to copy, store and take away huge amount of documents and information

☐ In a global economy, competition is so strong that some companies are more willing to do whatever it takes to survive and/or gain competitiveness and market share

☐ Others (please specify) _____

Section C – Protection and misappropriation of your trade secrets

C.1 What types of precautions are employed by your company to protect TS/CBI and how effective are they? (Check all boxes that apply)

- ☐ Confidentiality agreements to avoid misappropriation by employees
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Covenants-not-to-compete to avoid misappropriation by former employees and business partners
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Computer safeguards
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Physical restrictions to access (locks, empty desk policies)
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Access limitations policies (e.g. access to limited number of persons; sharing of minimum necessary amount of information)
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Compartmentalizing information
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Increase of salaries and/or benefits, including awards of stock options, to retain key employees
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Screening of potential partners, interns, etc. to avoid high risk profiles
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ Other, please specify _____
Effectiveness ☐ Low ☐ Medium ☐ High
- ☐ None

C.2 If your company is present in more than one EU country, does your company apply different TS/CBI protection measures according to the different country where your company trades in?

- ☐ Yes, with regard to any country, whether in the EU or outside
- ☐ Yes, only with regard to non EU countries
- ☐ No
- ☐ Not concerned

C.3 Did your company suffer attempts of misappropriation of TS/CBI during the last 10 years?

- ☐ None that we are aware of (Please go to question D.1)

☐ Yes, within the EU
☐ 1 to 5 times ☐ 6 to 10 times ☐ more than 10 times

☐ Yes, outside the EU
☐ 1 to 5 times ☐ 6 to 10 times ☐ more than 10 times

C.4 Attempts to misappropriate TS/CBI of your company were carried out by:

- ☐ Employees ☐ never ☐ once ☐ several times
- ☐ Former employees ☐ never ☐ once ☐ several times
- ☐ Hackers ☐ never ☐ once ☐ several times
- ☐ Competitors ☐ never ☐ once ☐ several times
- ☐ Visitors ☐ never ☐ once ☐ several times
- ☐ Private customers ☐ never ☐ once ☐ several times
- ☐ Public administration customers ☐ never ☐ once ☐ several times
- ☐ Investigation companies ☐ never ☐ once ☐ several times
- ☐ Consultants/internals ☐ never ☐ once ☐ several times
- ☐ Suppliers/business partners ☐ never ☐ once ☐ several times
- ☐ Employees of industry regulators ☐ never ☐ once ☐ several times
- ☐ Employees of investigation companies ☐ never ☐ once ☐ several times
- ☐ Service providers (cleaning companies, electrician, etc.)
☐ never ☐ once ☐ several times
- ☐ Unidentified parties ☐ never ☐ once ☐ several times
- ☐ Other (please specify) ☐ never ☐ once ☐ several times

C.5 Please indicate the consequences suffered by your company as a result of the attempts and successful acts of misappropriation:

- ☐ Loss of sales/clients/contracts
- ☐ Loss of jobs
- ☐ Costs in investigating
- ☐ Costs in negotiating a settlement
- ☐ Costs in prosecuting and litigating
- ☐ Bad publicity or damage to the company's image, reputation and reliability
- ☐ Other (please specify) _____

C.6 Would it be possible to calculate the amount of the damages effectively suffered for the cases of attempts and successful acts of misappropriation that you have suffered in the last 10 years?

If yes, provide an estimate figure (in Euros): _____

Section D – Litigation to protect and defend your trade secrets

D.1 Has your company been involved in litigation involving trade TS/CBI during the last 10 years?

- ☐ Yes, in the EU
If yes, how often ☐ once ☐ from 2 to 5 times ☐ more than 5 times

☐ Yes, outside the EU

☐ No that I am aware of

D.2 If your company experienced misappropriation of TS/CBI, in the EU, did your company seek legal remedies?

☐ Yes, always

☐ Yes, only in some cases

☐ No (Please go to question D.5)

D.3 If your company sought legal remedies against misappropriation within the EU, was it able to get (Check all boxes that apply):

☐ Court orders stopping in your/other countries unlawful use of misappropriated trade secrets

☐ Court orders to search and secure evidence of misappropriation

☐ Award of damages or other monetary compensation

☐ Criminal sanctions against perpetrator

☐ Customs seizure at EU borders of infringing goods

☐ Destruction of infringing goods produced using misappropriated trade secrets

☐ Publication of the Court decisions on the press/media

☐ None of the above

D.4 In case of litigation within the EU, if your company obtained an order from a court in an EU Member State to stop the use of misappropriated TS/CBI in the territory of that Member State, did your company try to obtain a similar order in other Member States?

☐ Yes, by trying to obtain the enforcement of the first order in the courts of other Member States

☐ Yes, by starting separate legal action in the other relevant Member States

☐ No. If no, why not? (Please specify) _____

D.5 When your company decided **not** to seek legal remedies against misappropriation within the EU, what was the reason?

☐ Low value of the TS/CBI in question or of damages caused ☐ Low ☐ Medium ☐ High

☐ Preference for out-of-Court settlement ☐ Low ☐ Medium ☐ High

☐ Lack of trust on the judicial system of the relevant Member State

☐ Fear of losing secrets/CBI ☐ Low ☐ Medium ☐ High

☐ Insufficient evidence to meet the standards of proof in court or other inability to prove misappropriation ☐ Low ☐ Medium ☐ High

☐ Litigation cost ☐ Low ☐ Medium ☐ High

☐ Inability to quantify damages ☐ Low ☐ Medium ☐ High

☐ Inability to identify offender ☐ Low ☐ Medium ☐ High

☐ Lack of effective legal remedies ☐ Low ☐ Medium ☐ High

☐ Duration of litigation ☐ Low ☐ Medium ☐ High

☐ Difficulties in establishing the right jurisdiction ☐ Low ☐ Medium ☐ High

☐ Other, please specify _____ ☐ Low ☐ Medium ☐ High

D.6 Has your company experienced, as defendant, abusive litigation by a competitor trying to intimidate your company?

with a false accusation of misappropriation of TS/CBI in the past 10 years?

☐ Yes, in the EU

If yes, how often: ☐ once ☐ between 2 and 5 times ☐ more than 5 times

☐ Yes, outside the EU

☐ No, in any country

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

E.1 In your opinion, if the European Commission were to undertake any legislative action with a view to harmonise the legislation of the EU Member States on protection of TS/CBI, it should focus on the following, also in terms of priority:

☐ Reduction in the number of forums where TS/CBI cases may be litigated

☐ Low ☐ Medium ☐ High

☐ Possibility of protecting TS/CBI effectively and efficiently in all Member States

☐ Low ☐ Medium ☐ High

☐ Reduction in litigation costs

☐ Low ☐ Medium ☐ High

☐ Saving in internal TS/CBI management programs

☐ Low ☐ Medium ☐ High

☐ Uniformity of employee contract terms with respect to TS/CBI

☐ Low ☐ Medium ☐ High

☐ Possibility of seizing/stopping at the EU borders of products manufactured using misappropriated TS/CBI

☐ Low ☐ Medium ☐ High

☐ No opinion

E.2 If the European Commission was to undertake any legislative action with a view to harmonise the legislation of the EU Member States on the protection of TS/CBI, establishing a sound, coherent and efficient legal frame work what would be the possible benefits:

☐ Less tendency for certain companies or persons to engage in trade secrets

Misappropriation

- ☐ More security in business transactions (agreements, collaborations) involving sharing/transferring/licensing of CBI/TS, and therefore more willingness to share or transfer TS/CBI under confidential clauses
- ☐ Lowering transactions costs involving sharing/transferring/licensing across several Member States
- ☐ More incentive to invest resources on research and development by providing more assurance that the investment could be recovered
- ☐ No perceived benefits

E.3 Would your company benefit from EU legal intervention establishing uniform rules on the following measures:

- ☐ Court orders stopping at EU level unlawful use of misappropriated TS/CBI
☐ Low ☐ Medium ☐ High
- ☐ Investigative power at EU level to identify parties responsible of TS/CBI misappropriation ☐ Low ☐ Medium ☐ High
- ☐ Criminal sanctions for parties responsible of TS/CBI misappropriation
☐ Low ☐ Medium ☐ High
- ☐ Damage awards to parties victim of TS/CBI misappropriation
☐ Low ☐ Medium ☐ High
- ☐ Enforcement at EU level of no-compete clauses (preventing former employers to use the acknowledged TS/CBI to compete with former employer)
☐ Low ☐ Medium ☐ High
- ☐ Enforcement at EU level of non-disclosure agreements (preventing contractors/employees to divulge TS/CBI)
☐ Low ☐ Medium ☐ High
- ☐ Unified court proceeding ☐ Low ☐ Medium ☐ High
- ☐ Other, please specify _____ ☐ Low ☐ Medium ☐ High

E.4 Do you see any negative impact on your company or for the economy if an EU legislative initiative is proposed by the European Commission in the field of TS/CBI?

- ☐ Yes, negative effects perceived; please specify _____
- ☐ No negative effects perceived

Section F – Your Company

PLEASE INSERT YOUR CODE: _____

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

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

- ☐ Yes ☐ No

F.3 Your country (from computer list)

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

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

F.5 The market in which your company operates is mainly driven by
(Please check only one):

- ☐ Product innovation - e.g. competition based on development and launch of new products/services
- ☐ Process innovation - e.g. competition based on production/organization improvement to provide existing products/services at a lower cost/price

F.6 Is your business market characterized by products/services or process with a short lifecycle (less than 2 years)?

- ☐ Yes ☐ No

F.7 Please estimate your company's total turnover for the year 2011 - in millions of Euros and excluding VAT

€ _____

F.8 Please estimate your company's average number of employees for the year 2011

F.9 With respect to Research & Development (R&D) activities, rank in level internal R&D activities and acquisition of external R&D

- Internal R&D ☐ Little ☐ Medium ☐ High

- Acquisition of external R&D ☐ Little ☐ Medium ☐ High

Section G – Additional information

G.1 In the box below, please write any additional comments that you would like to make.

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

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

Position in the company: _____

E-mail address (optional): _____

Thank you for taking the time to complete this survey.

66



(GROW)

66

From: (MARKT)
Sent: 08 October 2012 18:01
To: Gaudino, Francesca (Francesca.Gaudino@bakermckenzie.com)
Cc: (MARKT); (MARKT); (MARKT);
Subject: (MARKT); (MARKT)
Questionnaire after the pilot Survey + Introduction

Dear Francesca

Following our meeting of 4th October please find attached our proposals for a new version of the questionnaire.

Basically we agree on the need of simplifying the questionnaire and reducing the number of questions, and we have reworked some of the questions in order to obtain useful data for work on the impact assessment.

We are also suggesting a new introductory text to go along with questionnaire with the objective to make it easier for respondents (who may be unfamiliar with the topic) to grasp the basic notion of trade sects and the purpose of the survey.

We are available to discuss with you, Professor Franzoni, and Dr. Respass any of the proposed amendments, and we would like to have the amended version these documents before the survey is launched.

We also find it useful that respondents are given the chance of having a French and German version of the questionnaire, even if they have to use the EN version for entering their answers.

Kind regards



New
Questionnaire af...



Introduction to
the Survey.doc...

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Part A – Your trade secret

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

This question is important to be kept.

2/A.2 Could you please rank the value of TS/CBI to your company in the following areas:

You have suggested reducing the options from 17 to 10. We agree. However we do not agree with

- Merging "Undisclosed financial data," "Sales and service information" "Business/financial planning," "Customer profiling/market surveys," and "Customer surveys/supplier assessment reports" into: "Business and financial information."
- Merging Manufacturing technique" and "Formulae and recipes". Recipes can be the final product rather than a detail in manufacturing – ex: Coca-cola, etc

We propose merging Costumer and suppliers lists; merging manufacturing technique and procedural know-how. We also suggest dropping software (it will be included in "**Product technology**" if the company is in the business of designing and selling IT applications; or in "**Process know-how and technology**" if a secret software is used as a mean of manufacturing a product or providing a service). We also suggest to drop **recruitment plans** (not very linked with innovation" and probably not the most desired kind of info that a dishonest competitor may be looking for) anyway it can be considered as covered by 8. **Financial information & business planning**. We are not sure if it is worth keeping "Commercial bids and contracts", but for the moment we keep it. We suggest splitting into groups (Technical information & Business information) with four categories each:

Technical information

1. R&D data (projects, results, etc)
2. Process know-how and technology (manufacturing processes, software, devices, plants design)
3. Formulae and recipes
4. Product technology

Business information

5. Costumer or suppliers lists and associated data (ex: some contractual terms, satisfaction surveys, etc.)
6. Commercial bids and contracts
7. Marketing data and planning (advertising, market surveys, sales figures and forecast)
8. Financial information & business planning
9. Other technical / business data (indicate):

3/A.3 Is it common practice in your business market to have network agreements or other?

3. A.3 Is it common practice in your business market to have network agreements or other kinds of contract arrangements to share innovations between companies?		
	Response Percent	Response Count
Yes	33.3%	4
No	66.7%	8
answered question		12
skipped question		0

This question can be eliminated in view of question 7A7 below

7. A.7 Does your company share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements?		
	Response Percent	Response Count
Yes - continue to question A.7.1	75.0%	9
No - continue to question A.7.2	25.0%	3
answered question		12
skipped question		0

4/A.4 To what extent does the competitiveness/innovative growth and performance of your company rely on information and knowledge that it tries to keep confidential?

No changes. We think that the question is important. Uwe suggests that this should become the second question. On the hand, if we keep the sequence as it is now, respondents will first identify the various categories of information they usually keep confidential, and this exercise may help them being more aware of how important such CBI is for their competitiveness.

5/A.5 To what extent does your company rely on other intellectual property rights?

No changes

A.6 Reasons for your company for relying on TS/CBI to protect knowledge that might be protected under other IP rights - e.g. patents, designs (Check all boxes that apply)

The way the question is formulated (and the replies) indicate that the question is focus on a fraction of trade secret use, namely, the use of trade secrets for protecting intangibles that can be protected by other IP rights, maxime, patents. If that is the purpose then the only suggestion would be to consider replacing "*potential lack of eligibility*" by "*doubts on whether the IP right will be granted*". The latter may more clear/understandable to non-experts and non-native English speaker.

On the other hand, it could be interesting to measure the extent to which companies have info which cannot be captured by other IP rights (such as incremental improvements, recipes, and some other innovative steps that cannot be patented as well as business information): In the policy making arena

66a

people often ask, why should we protect trade secrets if we already have patents (which are better for society as they involve public disclosure of the invention?). In that context, it would good to show that patents are not the answer for all innovation steps, and that patents and trade secrets are complementary and create synergies in terms of securing R&D results.

Would that in mind, the question could be designed to capture both cases. If this second approach is taken the question and the answers would have to be rephrased. The answers would not be mutually exclusive, but rather ticked where appropriate, because the same company has different sorts of CBI (each on different reasoning) and requiring different replies. Suggestion:

Why does your company, in some cases, keeps information confidential, instead of protecting it using an IP Right, such patents, designs or copyright?

- 1 – My company never uses confidentiality or trade secrets
- 2 – In some cases my company uses confidentiality because other IP rights do not cover the type of information in question (lack of eligibility for other IP right protection),
- 3 – When other IP rights could be available, my company sometimes makes an option for confidentiality because:
 - Do not want to disclose as it is the best way to secure a competitive advantage;
 - Doubts on whether IPR will be granted;
 - Potential available IPR do not provide adequate protection for some type of information in question;
 - Costs to obtain and manage other IP rights (fees, monitoring IP rights infringements, litigation costs);
 - Time to obtain other IP right (patent or other);
 - Limited lifecycle of the information in question is shorter than the time needed to secure an IP right.

7/A.7 Does your company share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements? EX: know-how transfer; transfer or licensing of unpatented technology, services know-how, etc...

We would prefer for companies to be able to differentiate more between yes and no

- (1) Yes regularly
- (2) Yes occasionally
- (3) Never

8/A.7.1 YES my company share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements

To be deleted

9.A.7.2. NO my company does not share TS/CBI with third parties or use TS/CBI of third parties through contracts or other arrangements, due to

This question must be reworded to capture the reasons why trade secrets are not shared whenever this happens: As the question is formulated now, it only applies to companies that NEVER share. Naturally, many companies will have some TS that will share, and other TS that they will not be willing to share. Finally, the mentioning in the question – use TS from third parties – does not seem to be aligned the most "popular" answer (fear of losing secrecy)

Suggestion

In cases where my company does not share TS/CBI with other parties, this is because

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

The more direct question suggested in the report, or the following alternative could also be considered

Does the risk of losing secrecy by misuse, misappropriation or leakage prevent your company from sharing TS/CBI with other parties?

- 1 – Yes, always or quite often
- 2 – Sometimes (depending of the information in question, of the reliability of the counterpart, of the legal instruments available to prevent infringements of confidentiality)
- 3 – Very rarely
- 4 – Never
- 5 – Not applicable

PART B Threats to your trade secrets

~~B.1 In your business sector, what are the primary means by which companies usually obtain information about products, services, strategies of the other market players?~~

To be deleted

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

We suggest rewording the question (see underlined) and reduced the number of categories

Current list 13 categories	New list 9 categories
Current Employees	Current Employees
Former Employees	Former Employees
Hacker	<i>This is more the means used to steal information than an actor (most likely a competitor)</i>
Competitors	Competitors
Visitors	<i>Comment: visitors are either competitors, business customers, etc...</i>
Private customers	Customers/clients <i>there are no substantial differences between clients from private and public sectors when it comes to contractual arrangements. Situations where companies are obliged to disclose information without the choice of declining are captured by Regulatory agencies</i>
Public administration customers	
Consultants/internals	Consultants/internals
Suppliers/business partners	Suppliers/business partners
Employees of industry regulators	Regulatory agencies
Investigation companies	<i>This one is more about the means used. They do it on behalf of other actors (competitors)</i>
Employees of service providers (cleaning companies, electrician, etc.)	Other service providers having access to premises (cleaning companies, electrician, etc.)
Other (please specify) _____	Other (please specify) _____

~~B.3 Does your company believe that your trade secrets are more vulnerable to misappropriation in some EU Member States than in others?~~

Delete

13.B.4 Does your company believe that the risk of exposure to TS/CBI misappropriation has increased in the last 10 years?

In order to make it less time consuming and less opinative, the options should consist of

- Yes, Significantly
- Yes, some increase / slight increase
- No increase
- There has been a decrease
- Do not know / no opinion

The reasons for the possible increase can be found in literature.

SECTION C - Protection and misappropriation of your trade secrets

14/C.1 What types of precautions are employed by your company to protect TS/CBI and how effective are they? (Check all boxes that apply)

This could be deleted – or simplified by deleting effectiveness rates

15/C.2 If your company is present in more than one EU country, does your company apply different TS/CBI protection measures depending of the country in question?

We added "or trades" in the question in order not to limit answers to cases where there is a physical presence (branches, manufacturing plants, etc.)

If your company is present or trades in more than one EU country, does your company apply different TS/CBI protection measures depending of the country in question?

- Yes, we apply different safeguards and/or different contractual terms, because of differences in national laws on trade secrets
- No
- No opinion
- Not concerned

16. C.3 Did your company suffer attempts of misappropriation of TS/CBI in the European Union during the last 10 years?

Include acts of misappropriation and merge with 17 C.3.1 a

Did your company suffer attempts or acts of misappropriation of TS/CBI in the European Union during the last 10 years?

- Yes
- 1 to 5 times
- More than 5 times
- Not that we are aware of, but we suffered attempts / attacks outside the EU
- Not that we are aware of (in EU and outside EU)

17/C.3

To be deleted see above

18.C.4 Attempts/Acts of misappropriate of your company's TS/CBI were carried out by:

This should be updated in line with 11.B.2 :

[NEW] 18/C.4.1 Attempts/Acts of misappropriate of your company's TS/CBI were carried out through

Or we give it a different focus, namely on the means used:

(1) IT network hacking,(2) unauthorised physical access to premises, (3) abuse of physical access to premises or (4) through unauthorised discloser/use by someone that had already access to the info under a confidentiality agreement or a legal duty of confidentiality

19. C.5 Please indicate one or more consequences suffered by your company as a result of the attempts and successful acts of misappropriation:

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

~~20C6 Would it be possible to calculate the amount of the damages effectively suffered for the cases of attempts and successful acts of misappropriation that you have suffered in the last 10 years?~~

Delete in view of Question 26

Section D – Litigation to protect and defend your trade secrets

21.D.1 Has your company been involved in litigation involving trade TS/CBI during the last 10 years?

Merge with Q23

22D1.1 Yes my company has been involved in litigation involving trade TS/CBI during the last 10 years

delete

23.D.2 If your company experienced misappropriation of TS/CBI, in the EU, did your company seek legal remedies in the EU?

Changes in the question because of Q21/Q23 merger

If your company experienced misappropriation of TS/CBI during the past 10 years, did your company seek legal remedies in the EU?

- Possible replies
- Yes, always
- Yes, but only in some cases,
- No, we only litigated outside the EU
- No, never.
- Not concerned

24.D.3 If your company sought legal remedies against misappropriation within the EU, was it able to get (Check all boxes that apply):

Current	New
<input type="checkbox"/> Court orders stopping in your/other countries unlawful use of misappropriated trade secrets	Court orders stopping unlawful use of misappropriated trade secrets
<input type="checkbox"/> Court orders to search and secure evidence of misappropriation	ok
<input type="checkbox"/> Award of damages or other monetary compensation	ok
<input type="checkbox"/> Criminal sanctions against perpetrator	ok

	Monetary fine for the company or organisation involved in acquiring or transmitting the trade secret
<input type="checkbox"/> Customs seizure at EU borders of infringing goods	Court order for customs to seize goods at EU border
<input type="checkbox"/> Destruction of infringing goods produced using misappropriated trade secrets	Court order for destruction of goods that were manufactured using misappropriated trade secrets
<input type="checkbox"/> Publication of the Court decisions on the press/media	ok
<input type="checkbox"/> None of the above	ok

25/D.4 In case of litigation in the EU, if your company obtained an order from a national court to stop the use of misappropriated TS/CBI in the territory of that Member State, have you tried to enforce this order in other Member States?

Rewording of the question as underlined above

- ☐ Yes, and we were successful in all Member States where we tried
- ☐ Yes, but we was unsuccessful in at least one Member State
- ☐ No, we preferred to start separate legal actions in the other relevant Member States
- ☐ No, it was too costly to seek legal protection in other Member States
- ☐ No, because of the uncertainty of the result in other Member States
- ☐ No, there was no need because our case(s) only concerned one Member State
- ☐ Other,(Please specify) _____

26.D.5 When your company decided not to seek legal remedies against misappropriation in the EU, what were the reasons? Tick as many as appropriate

- ☐ Low value of the TS/CBI in question or of damages caused
- ☐ Initiating legal action would bring the case to the public arena and our company's reputation and image could be damaged [NEW]
- ☐ Preference for out-of-Court settlement
- ☐ Litigation costs
- ☐ Expected duration of litigation
- ☐ Lack of trust on the judicial system of the relevant Member State
- ☐ Fear of losing TS/CBI in the course of the court proceedings
- ☐ Inability to identify offender

- ☐ Difficulty in collection evidence to prove that the defendant misappropriated a TS/CBI
- ☐ Inability to quantify damages
- ☐ Low probability of collecting awarded damages [NEW]
- ☐ Lack of effective legal remedies
- ☒ ~~Difficulties in establishing the right jurisdiction~~ [to be deleted]
- ☐ Other, please specify _____

27. D.6 In the EU, has your company experienced, as defendant, abusive litigation by a competitor trying to intimidate your company with a false accusation of misappropriation of TS/CBI in the past 10 years?

Question to be reworded as underlined.

Answers should be

- Yes,
- No
- Not in the EU, but outside the EU

~~28 D.6.1 Yes my company has been victim of abusive litigation~~

To be deleted

Part E Added value of a legislative proposal

We propose substantial changes in this section and therefore we do not make reference to the questionnaire used in the pilot survey.

In our view this section should consist of the following questions:

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

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

NEW E.ii. EU legislation on trade secrets should cover the following (tick where you agree and provide comments if you find it useful)

for each reply: N/A; Low; Medium; High

Perhaps respondents could be given the possibility of inserting coments

Issues to be covered in a legislative proposal	Comments by respondents
Definition of what is a TS/CBI to be protected against misappropriation;	
Prohibition of acts of misappropriation and misuse of TS/CBI and a definition of such acts;	
National court orders to stop the unlawful use of the misappropriated TS/CBI in the whole of the EU;	
National court orders requiring all customs authorities in the EU to stop at the EU borders imports of products manufactured using misappropriated TS/CBI;	
Rules on the calculation of damages, allowing for taking into account all relevant factors (lost sales, unjustified profits by the defendant, royalties, etc.);	
Uniform contractual rules on non-compete and/or non-disclosure clauses between the trade secret owner and	

employees;	
Rules ensuring that the confidentiality of the trade secret is kept during court proceedings and hearings, so that the TS is not lost or further disclosed in the course of legal actions;	
Rules on criminal penalties and/or fines for individuals and organisations responsible for misappropriation of trade secrets;	
Other (please specify): _____	
Other (please specify): _____	
Other (please specify): _____	

[NEW] E.iii. What impacts, if any, you could expect from an EU legislative proposal on trade secrets ?

Comment: respondents could select a mix of benefits and negative impacts (they are not self – excluding)

(a) possible benefits, one or more of the following (tick where appropriate):

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

(b) No perceived benefits

(c) Possible negative impacts, one or more of the following:

- ☐ Increased risk of anticompetitive behaviour by the holders of trade secrets
- ☐ Duplication of costs in R&D due to secrecy
- ☐ Less labour mobility;
- ☐ Innovation would be impaired;
- ☐ More barriers to market entry;
- ☐ Other, specify _____

(d) No perceived negative impacts: _____

(e) No opinion

Ticking one or more option is (a) is compatible with ticking one or more options in (c) or ticking (d)

Ticking (b) is compatible with ticking one or more options in (c) or ticking (d)

(a) and (b) are mutually exclusive, and so are (c) and (d)

Ticking (e) is incompatible with ticking any other option

For each reply we could: N/A; Low; Medium; High]

part F

F.7 Please estimate your company's total turnover for the year 2011 - in millions of Euros and excluding VAT

We would suggest presenting several options instead of asking for an exact figure. This could break some reluctance in providing figures and speed up the completion of the questionnaire

For example (in thousand Euros)

- ☐ Less than 2 Million €
- ☐ From 2 Million € up and less than 10 Million €
- ☐ From 10 Million up and less than 50 Million €
- ☐ From 50 Million € up and less than 100 Million
- ☐ More than 100 Million €

Naturally, it is important to give a good thought to the different groups. The groups above were inspired on definition of a SME

http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm

F.8 Please estimate your company's average number of employees for the year 2011

We would suggest presenting several options instead of asking for an exact figure. This could break some reluctance in providing figures and speed up the completion of the questionnaire

For example (in thousand Euros)

- Less than 10
- 10 or more, but less than 50
- 50 or more but less than 250
- 250 or more but less than 1000
- More than 1000

Naturally, it is important to give a good thought to the different groups. The groups above were inspired on definition of a SME. See link above

36.F.5 The market in which your company operates is mainly driven by

Comment: *this question could perhaps be deleted if it is considered that question 2/A.2 already provides sufficient data on this topic. If the question is kept, the second option should also encompass gains in time*

- ☐ Product innovation - e.g. competition based on development and launch of new products/services
- ☐ Process innovation - e.g. competition based on production/organization improvement to provide existing products/services at a lower cost/price, or faster

F.6 Is your business market characterized by products/services or process with a short lifecycle (less than 2 years)?

Keep

10F.9 Please rank the levels of internal R&D (research and development) and acquisition of external R&D in your company

Comments:

- *The question should contain the indication "in your country"*
- *Respondents may struggle with the concept of "acquisition of external R&D" – externalising R&D, that is contracting a third party to carry out R&D should in principle be considered internal R&D, or not? Usually in know-how transfer agreements the purchaser is buying the results of R&D, not really investing in R&D or should, for the purpose of this question know-how transfer agreements tantamount to acquisition by the transferee of external R&D?*

40. F.9 With respect to Research & Development (R&D) activities, rank in level internal R&D activities and acquisition of external R&D

	Little	Medium	High	Response Count
Internal R&D	8,3% (1)	25,0% (3)	66,7% (8)	12
Acquisition of external R&D	25,0% (3)	41,7% (5)	33,3% (4)	12
answered question				12
skipped question				0

Survey on

Trade Secrets and confidential business information in the Internal Market

The European Commission entrusted to Baker & McKenzie a project aimed at providing an in-depth analysis of the economic and legal scenario applying to trade secrets and confidential business information in the Internal Market.

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

Confidential business information and Trade secrets

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

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

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

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

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

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

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

Thank you in advance for your participation in this Survey.

67



(GROW)

67

From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 08 October 2012 18:06
To: (MARKT)
Cc: (MARKT); (MARKT); (MARKT);
Subject: RE: Questionnaire after the pilot Survey + Introduction

Dear

Thanks very much for your input. We will discuss the proposed amendments and provide you with a revised version of the questionnaire shortly to ensure that you agree on the final set of questions.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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From: @ec.europa.eu [mailto: @ec.europa.eu]
Sent: lunedì 8 ottobre 2012 18:01
To: Gaudino, Francesca
Cc: @ec.europa.eu; @ec.europa.eu; @ec.europa.eu;
@ec.europa.eu
Subject: Questionnaire after the pilot Survey + Introduction

Dear Francesca

Following our meeting of 4th October please find attached our proposals for a new version of the questionnaire.

Basically we agree on the need of simplifying the questionnaire and reducing the number of questions, and we have reworked some of the questions in order to obtain useful data for work on the impact assessment.

We are also suggesting a new introductory text to go along with questionnaire with the objective to make it easier for respondents (who may be unfamiliar with the topic) to grasp the basic notion of trade sectors and the purpose of the survey.

We are available to discuss with you, Professor Franzoni, and Dr. Respass any of the proposed amendments, and we would like to have the amended version these documents before the survey is launched.

We also find it useful that respondents are given the chance of having a French and German version of the questionnaire, even if they have to use the EN version for entering their answers.

Kind regards

EUROPEAN COMMISSION

Internal Market and Services DG

D3 - Fight against counterfeiting and piracy

Rue de Spa 2, B-1049 Brussels

Tel. (+32) 22 95

<mailto:> ec.europa.eu

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68



(GROW)

68

From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 09 October 2012 19:12
To: (MARKT)
Cc: (MARKT); (MARKT); (MARKT);
Subject: RE: amendment of the contract: new time table
Attachments: Revised Timetable Study Trade Secrets.doc

Dear

We would propose to extend the delivery date for the Draft Final Study of 5 days – from December 9 to December 14, so to have 8 days as of delivery of the Full Survey Report, which is due for December 7. We also corrected a typo on the year of delivery of the Definitive version of the Study (2013 instead of 2012). Please see attached document in mark-up for your convenience.

Please let us know if you are comfortable with the proposed amendment.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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From: ec.europa.eu [mailto: ec.europa.eu]
Sent: martedì 9 ottobre 2012 17:27
To: Gaudino, Francesca
Cc: ec.europa.eu; ec.europa.eu; ec.europa.eu; de
Martinis, Lorenzo
Subject: amendment of the contract: new time table

Dear Francesca,

I am sending you the original time table of the contract on the study, and the time table that I will be proposing for the amendment of the contract, which tries to recuperate a bit of the delay.

Regards

EUROPEAN COMMISSION

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mailto: @ec.europa.eu

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MARKT/2010/128/D

study on trade secrets and confidential business information in the internal market

REVISED TIMETABLE

ACTIONS & TASKS	TIME LIMIT CALCULATION	DEADLINE
Last signature of the contract	Reference date	28/12/2011
Kick-off meeting	Reference date + 5 days	
First progress meeting	Ref. date + 1 month	
Second progress meeting	Ref. date + 2 months	
First interim study	Month A [ref. date + 3 months]	28/03/2012
Third progress meeting	Month A + 15 days	
Commission's acceptance	Month A + 30 days	
Second interim study	Month B [ref. date + 5 months]	28/05/2012
Fourth progress meeting	Month B + 30 days	
Commission's acceptance	Month B + 45 days	
Pilot Survey Report	Month C [ref. date + 7 months]	28/09/2012
Meeting	Month C + 10 days	
Commission's acceptance	Month C + 30 days	
Fifth progress meeting	Month C + 45 days	
Draft final study	Month D [ref. date + 11 months + 105 days]	09 <u>14</u> /12/2012
Meeting	Month D + 20 days	
Commission's comments	Month D + 45 days	
Definitive version of the study	Reference date +13 months + 10 days	09/02/2012 <u>3</u>
Commission's acceptance	Reference date +14 months + 26 days	26/03/2013

69



(GROW)

From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 10 October 2012 19:34
To: (MARKT)
Subject: RE: amendment of the contract: new time table

I am a lawyer, too and don't really get along with numbers ☺

December 13 is fine, then.

I don't want to bother you, but can I ask when you think it would be possible to address the issue of payment of the first installment? Just to have an idea of the timeline would be useful to manage administrative issues.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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From: @ec.europa.eu [mailto:dec.europa.eu]
Sent: mercoledì 10 ottobre 2012 19:27
To: Gaudino, Francesca
Subject: RE: amendment of the contract: new time table

Dear Francesca

I think my calculations were wrong in the first version – after all I am lawyer....

The ref date is 28/12/2011

11 months makes 28/11/2012

If you count 15 days after 28/11 you will have 2 days running still in November + 13 days in December.

So, ref. date + 11 months + 15 days = 13.12.2012.

Regards

EUROPEAN COMMISSION

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

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

From: Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]

Sent: Wednesday, October 10, 2012 1:34 PM

To: (MARKT)

Subject: RE: amendment of the contract: new time table

Dear

I am afraid I don't understand. the date for the Draft final study as set is ref. date + 11 months + 10 days - 09.12.2012; I suggested to extend of 5 days, so the result would be ref. date + 11 months + 15 days - 14.12.2012. Or am I mistaken?

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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

Sent: mercoledì 10 ottobre 2012 11:11

To: Gaudino, Francesca

Subject: RE: amendment of the contract: new time table

Dear Francesca

I am consulting my colleagues on your suggestion and I will come back to you soon on this.

I just wanted to clarify that, unless I am mistaken, if we set the delivery of the draft for [ref. date + 11 months + 15 days] the deadline will be Thursday 13 December and not Friday 14 December. Is that OK?

Kind regards,

EUROPEAN COMMISSION

Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2, B-1049 Brussels
Tel. (+32) 22 9

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

From: Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]

Sent: Tuesday, October 09, 2012 7:12 PM

To: (MARKT)

Cc: (MARKT); (MARKT); (MARKT); de

Martinis, Lorenzo

Subject: RE: amendment of the contract: new time table

Dear

We would propose to extend the delivery date for the Draft Final Study of 5 days – from December 9 to December 14, so to have 8 days as of delivery of the Full Survey Report, which is due for December 7. We also corrected a typo on the year of delivery of the Definitive version of the Study (2013 instead of 2012). Please see attached document in mark-up for your convenience.

Please let us know if you are comfortable with the proposed amendment.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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To: Gaudino, Francesca
Cc: ec.europa.eu; ec.europa.eu;
ec.europa.eu; de Martinis, Lorenzo
Subject: amendment of the contract: new time table

Dear Francesca,

I am sending you the original time table of the contract on the study, and the time table that I will be proposing for the amendment of the contract, which tries to recuperate a bit of the delay.

Regards

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From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 11 October 2012 19:05
To: (MARKT)
Cc: (MARKT); (MARKT); (MARKT); thomas.respass@bakermckenzie.com; Luigi Alberto Franzoni; Lorenzo.de.Martinis@bakermckenzie.com
Subject: RE: Questionnaire after the pilot Survey + Introduction

Dear

In order to share with you the revised questionnaire, we will send you the new version of the questionnaire by Wednesday, October 17 and we would propose to have a conference call with you next Thursday, October 18 at 16.00 pm.

Can you please let us know if the proposed conference date and time suit you.

Thanks in advance.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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Sent: lunedì 8 ottobre 2012 18:01
To: Gaudino, Francesca
Cc: @ec.europa.eu; @ec.europa.eu; @ec.europa.eu;
@ec.europa.eu
Subject: Questionnaire after the pilot Survey + Introduction

Dear Francesca

Following our meeting of 4th October please find attached our proposals for a new version of the questionnaire.

Basically we agree on the need of simplifying the questionnaire and reducing the number of questions, and we have reworked some of the questions in order to obtain useful data for work on the impact assessment.

We are also suggesting a new introductory text to go along with questionnaire with the objective to make it easier for respondents (who may be unfamiliar with the topic) to grasp the basic notion of trade sects and the purpose of the survey.

We are available to discuss with you, Professor Franzoni, and Dr. Respass any of the proposed amendments, and we would like to have the amended version these documents before the survey is launched.

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Kind regards

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Internal Market and Services DG

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71



(GROW)

71

From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 11 October 2012 20:09
To: (MARKT)
Subject: RE: amendment of the contract: new time table

Dear

thanks for the clarifications. i appreciate that the procedure to revise the contract and get the amendments approved is time and efforts consuming. As usual, please feel free to ask for any support I can provide from my end.

Have a nice evening,
Francesca

Francesca Gaudino
Counsel

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




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From: @ec.europa.eu [mailto: @ec.europa.eu]
Sent: giovedì 11 ottobre 2012 12:22
To: Gaudino, Francesca
Subject: RE: amendment of the contract: new time table

Hi Francesca

Now that we have agreed on the time line I will ask for the amendment of the contract.

I am planning to send observations on the resubmitted 2nd Interim report – tomorrow if I can - which will still not be as exhaustive and detailed as I had wished for. I will probably send our acceptance with observations, 

REDACTED

Then, you may send the invoice – I do not know exactly how much time does it take to process it and pay; 

REDACTED



Regards

From: Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]
Sent: Wednesday, October 10, 2012 7:34 PM
To: (MARKT)
Subject: RE: amendment of the contract: new time table

I am a lawyer, too and don't really get along with numbers ☺

December 13 is fine, then.

I don't want to bother you, but can I ask when you think it would be possible to address the issue of payment of the first installment? Just to have an idea of the timeline would be useful to manage administrative issues.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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From: ec.europa.eu [<mailto:ec.europa.eu>]
Sent: mercoledì 10 ottobre 2012 19:27
To: Gaudino, Francesca
Subject: RE: amendment of the contract: new time table

Dear Francesca

I think my calculations were wrong in the first version – after all I am lawyer....

The ref date is 28/12/2011

11 months makes 28/11/2012

If you count 15 days after 28/11 you will have 2 days running still in November + 13 days in December.

So, ref. date + 11 months + 15 days = 13.12.2012.

Regards

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

From: Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]
Sent: Wednesday, October 10, 2012 1:34 PM
To: (MARKT)
Subject: RE: amendment of the contract: new time table

Dear

I am afraid I don't understand. the date for the Draft final study as set is ref. date + 11 months + 10 days - 09.12.2012; I suggested to extend of 5 days, so the result would be ref. date + 11 months + 15 days - 14.12.2012. Or am I mistaken?

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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From: _ @ec.europa.eu [mailto:_@ec.europa.eu]
Sent: mercoledì 10 ottobre 2012 11:11
To: Gaudino, Francesca
Subject: RE: amendment of the contract: new time table

Dear Francesca

I am consulting my colleagues on your suggestion and I will come back to you soon on this.

I just wanted to clarify that, unless I am mistaken, if we set the delivery of the draft for [ref. date + 11 months + 15 days] the deadline will be Thursday 13 December and not Friday 14 December. Is that OK?

Kind regards,

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

From: Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]
Sent: Tuesday, October 09, 2012 7:12 PM
To: (MARKT)
Cc: (MARKT); (MARKT);

(MARKT); de Martinis, Lorenzo

Subject: RE: amendment of the contract: new time table

Dear

We would propose to extend the delivery date for the Draft Final Study of 5 days – from December 9 to December 14, so to have 8 days as of delivery of the Full Survey Report, which is due for December 7. We also corrected a typo on the year of delivery of the Definitive version of the Study (2013 instead of 2012). Please see attached document in mark-up for your convenience.

Please let us know if you are comfortable with the proposed amendment.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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From: @ec.europa.eu [mailto:@ec.europa.eu]
Sent: martedì 9 ottobre 2012 17:27
To: Gaudino, Francesca
Cc: @ec.europa.eu; @ec.europa.eu;
@ec.europa.eu; de Martinis, Lorenzo
Subject: amendment of the contract: new time table

Dear Francesca,

I am sending you the original time table of the contract on the study, and the time table that I will be proposing for the amendment of the contract, which tries to recuperate a bit of the delay.

Regards

EUROPEAN COMMISSION
Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2, B-1049 Brussels
Tel. (+32) 22 9

mailto:

;@ec.europa.eu

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72



GROW)

72

From: (MARKT)
Sent: 15 October 2012 18:19
To: 'Gaudino, Francesca'
Cc: (MARKT); (MARKT); thomas.respass@bakermckenzie.com; Luigi Alberto Franzoni; Lorenzo.de.Martinis@bakermckenzie.com
Subject: RE: Questionnaire after the pilot Survey + Introduction

Dear Francesca, dear all

I will be away for the rest of the week, but you may arrange for the conference call with

From: Gaudino, Francesca [mailto:francesca.gaudino@bakermckenzie.com]
Sent: Thursday, October 11, 2012 12:00
To: (MARKT); (MARKT); thomas.respass@bakermckenzie.com; Luigi Alberto Franzoni; Lorenzo.de.Martinis@bakermckenzie.com
Subject: RE: Questionnaire after the pilot Survey + Introduction

In order to share with you the revised questionnaire, I will send you the new version of the questionnaire by Wednesday, October 17, and we would propose to have a conference call on Thursday, October 18, at 1:00 p.m.

Can you please let us know if the proposed conference date and time suit you?

Thanks in advance,

Kind regards,
Francesca

Francesca Gaudino

Studio Professionale s.r.l. s.p.a.
Via Montenapoleone, 15
20121 Milano (Italy)
Tel: +39 02 231101
Fax: +39 02 231101

Do you need to print the questionnaire and protect the environment?

From: @ec.europa.eu [mailto: @ec.europa.eu]
Sent: lunedì 8 ottobre 2012 18:01
To: Gaudino, Francesca
Cc: @ec.europa.eu; @ec.europa.eu; @ec.europa.eu;
@ec.europa.eu
Subject: Questionnaire after the pilot Survey + Introduction

Dear Francesca

Following our meeting of 4th October please find attached our proposals for a new version of the questionnaire.

Basically we agree on the need of simplifying the questionnaire and reducing the number of questions, and we have reworked some of the questions in order to obtain useful data for work on the impact assessment.

We are also suggesting a new introductory text to go along with questionnaire with the objective to make it easier for respondents (who may be unfamiliar with the topic) to grasp the basic notion of trade sectors and the purpose of the survey.

We are available to discuss with you, Professor Franzoni, and Dr. Respass any of the proposed amendments, and we would like to have the amended version these documents before the survey is launched.

We also find it useful that respondents are given the chance of having a French and German version of the questionnaire, even if they have to use the EN version for entering their answers.

Kind regards

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

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72bis



(GROW)

72 bis

From: Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>
Sent: 16 October 2012 13:44
To: (MARKT)
Cc: thomas.respress@bakermckenzie.com; Luigi Alberto Franzoni;
Subject: Survey Questionnaire - Conference

Dear
the conference is confirmed for Thursday 18 at 16.00 CET.
I will send out the conference details shortly.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



Do you really need to print this e-mail?
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From: Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]
Sent: Monday, October 15, 2012 7:51 PM
To: (MARKT)
Cc: (MARKT); (MARKT); (MARKT); (MARKT);
(MARKT); Respress, III, Thomas S.; luigi.franzoni@ de Martinis, Lorenzo
Subject: RE: Questionnaire after the pilot Survey + Introduction

Dear

We will then coordinate with on this.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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From: _____@ec.europa.eu [mailto:_____@ec.europa.eu]
Sent: lunedì 15 ottobre 2012 18:19
To: Gaudino, Francesca
Cc: _____@ec.europa.eu; _____@ec.europa.eu; _____@ec.europa.eu;
_____@ec.europa.eu; Respass, III, Thomas S.; luigi.franzoni@unibo.it; de Martinis, Lorenzo
Subject: RE: Questionnaire after the pilot Survey + Introduction

Dear Francesca, dear all

I will be away for the rest of the week, but you may arrange for the conference call with

Regards,

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

From: Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]
Sent: Thursday, October 11, 2012 7:05 PM
To: _____ (MARKT)
Cc: _____ (MARKT); _____ (MARKT); _____ (MARKT);
_____ (MARKT); thomas.respass@bakermckenzie.com; Luigi Alberto Franzoni;
Lorenzo.de.Martinis@bakermckenzie.com
Subject: RE: Questionnaire after the pilot Survey + Introduction

Dear

In order to share with you the revised questionnaire, we will send you the new version of the questionnaire by Wednesday, October 17 and we would propose to have a conference call with you next Thursday, October 18 at 16.00 pm.

Can you please let us know if the proposed conference date and time suit you.

Thanks in advance.

Kind regards,
Francesca

Francesca Gaudino
Counsel

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



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From: [@ec.europa.eu](mailto:) [mailto: [@ec.europa.eu](mailto:)]
Sent: lunedì 8 ottobre 2012 18:01
To: Gaudino, Francesca
Cc: [@ec.europa.eu](mailto:); [@ec.europa.eu](mailto:);
[@ec.europa.eu](mailto:); [@ec.europa.eu](mailto:)
Subject: Questionnaire after the pilot Survey + Introduction

Dear Francesca

Following our meeting of 4th October please find attached our proposals for a new version of the questionnaire.

Basically we agree on the need of simplifying the questionnaire and reducing the number of questions, and we have reworked some of the questions in order to obtain useful data for work on the impact assessment.

We are also suggesting a new introductory text to go along with questionnaire with the objective to make it easier for respondents (who may be unfamiliar with the topic) to grasp the basic notion of trade sects and the purpose of the survey.

We are available to discuss with you, Professor Franzoni, and Dr. Respass any of the proposed amendments, and we would like to have the amended version these documents before the survey is launched.

We also find it useful that respondents are given the chance of having a French and German version of the questionnaire, even if they have to use the EN version for entering their answers.

Kind regards

EUROPEAN COMMISSION
Internal Market and Services DG
D3 - Fight against counterfeiting and piracy
Rue de Spa 2, B-1049 Brussels
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73



(GROW)

73

From: de Martinis, Lorenzo <Lorenzo.de.Martinis@bakermckenzie.com>
Sent: 15 October 2012 18:22
To: (MARKT)
Cc: (MARKT); Gaudino, Francesca
Subject: Trade Secrets Study - Time table

Dear

I am writing to you in connection with the contract of 28 November 2012 for a study on trade secrets and confidential business information in the internal market.

As you are aware the fact that DG Internal Market and Services scheduled the conference on trade secrets for the 29 of June 2012, had an impact in the time line of our deliverables.

Indeed, the 2nd Interim Report which was initially due on 28 May 2012, should have incorporated the results from the conference, including the revision of the methodology and questionnaire to be used on the survey on trade secrets. As a consequence we were not in a position to submit the 2nd on time. In turn we have presented it on 31 July 2012.

Furthermore, the pilot Survey could not be conducted properly, if it have been launched and concluded during August. Hence, the pilot survey was carried out during September and we have provided you with the respective report on 2 October 2012 instead of 28 July- that is with two months and 4 day of delay.

Under these circumstances, we are not in a position to submit the draft of the final study 28/10/2012, nor the final study on 28/12/2012, and we hereby request a rescheduling of such deadlines for 13/12/2012 and 09/02/2013, respectively – which would allow to recover some of the delay that the project has suffered.

Yours faithfully,

Lorenzo de Martinis

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



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74





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Directorate General Internal Market and Services

INTELLECTUAL PROPERTY
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74

Brussels, 15 OCT 2012
markt.ddg1.d.3(2012)1405206

Mr de Martinis
Lorenzo.de.Martinis@bakermckenzie.com

Dear Mr de Martinis,

Subject: 2nd Interim Report

Thank you for the revised 2nd Interim Report of 13 of September 2012.

↓

REDACTED

↑

we also acknowledge that this is work in progress and that globally speaking, we consider that the revised 2nd Interim report has sufficiently met what could be achieved at this stage, particularly in view of the importance of the data to be captured by the forthcoming survey.

I am therefore happy to inform you that we accept the 2nd Interim report.

My team will in the meantime continue in collaborate closely with you and send more specific feedback for your consideration in preparing the draft final report that should fully meet the requirements that I have listed above.

Yours sincerely

Contact:

, Telephone: +32 229-

_____@ec.europa.eu

cc. Francesca GAUDINO (Francesca.Gaudino@bakermckenzie.com)

75



75

(GROW)

From: Luigi Alberto Franzoni <luigi.franzoni@unibo.it>
Sent: 16 October 2012 18:46
To: (MARKT)
Cc: Francesca.Gaudino@bakermckenzie.com; Lorenzo.de.Martinis@bakermckenzie.com;
IARKT)
Subject: R: TRade Secrets Questionnaire

Dear , Thanks very much for the prompt reply.
Your case is clear and convincing. I guess question Q E.ii could be easily modified as you suggest.
Look forward to talk to you on Thursday (where we can decide to change this question, if needed).
Thanks again you your fast and insightful reply.
Yours, luigi

Da: @ec.europa.eu [mailto: @ec.europa.eu]
Inviato: martedì 16 ottobre 2012 18:04
A: Luigi Alberto Franzoni
Cc: @ec.europa.eu; @ec.europa.eu; @ec.europa.eu;
thomas.respass@bakermckenzie.com; Lorenzo.de.Martinis@bakermckenzie.com;
Francesca.Gaudino@bakermckenzie.com; @ec.europa.eu
Oggetto: RE: TRade Secrets Questionnaire

Dear professor,

Thank you for your feedback.

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

1) Question 29/E1 in the Pilot Quest. presented two problems.

- First, it did not allow the respondent for a clear "No reply" but went immediately into what should be the focus of legislation. Actually, the respondent may think that the Commission should not propose any legislation at all. This is important since the respondent may be under the impression that the Commission has already decided to propose legislation. We want to avoid giving this impression. This is why we proposed a new Question "E.i" on whether legislation should be desirable.
- Second, the reply options in 29/E1 were a combination of objectives and anticipated benefits. To some extent, there was an overlap with Q 31/E3 on the content of legislation (e.g. uniformity of employee contracts) and partially with Q31/E2 on benefits (e.g. the reduction of litigation costs or the savings in internal management programs). Also, some of the reply options could mislead the respondent, E.g.
 - Reduction in the number of fora where TS cases may be litigated. This issue is dealt with by general civil procedure law (Rome I and II and Brussels I) and it is not going to change.
 - Possibility of protecting TS effectively and efficiently in all MS: this is like "motherhood and apple pie", who is going to oppose?

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

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

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

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

For new Q E.ii, we could indeed follow the formulation of former Q31/E3 ["Would your company benefit from EU legal intervention establishing rules on any of the following measures?"]. Please note that we prefer to avoid the term "uniform". In terms of "opinion", we can possibly interpret the results as meaning that if they benefit from a particular measure, they are likely to be in favour of the Commission proposing it. So we indirectly address the problem of opinion.

Concerning new Q E.iii, you could reformulate the question and the possible replies to be directly addressed at the respondent.

- For instance, the question could be as follows: if a EU legislation protecting trade secrets from their misappropriation by third parties was introduced, what would be the benefits and/or negative effects for your company?
- Then, you would need to reformulate the possible reply options so that they are at the level of the respondent. For instance: instead of "more investment in R&D and innovation", you could have "my company is likely to invest more in R&D and innovation because of the improved protection".

I have the impression that all the possible reply answers can be adapted.

We will be able draw general conclusions from the individual replies, I guess.

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

Would this work in your view? We can discuss on Thursday on the basis of your new draft questionnaire.

From: Luigi Alberto Franzoni [<mailto:luigi.franzoni@>]

Sent: Tuesday, October 16, 2012 3:03 PM

To: (MARKT)

Cc: (MARKT); (MARKT); (MARKT);
thomas.respass@bakermckenzie.com; Lorenzo.de.Martinis@bakermckenzie.com; Gaudino, Francesca;
(MARKT)

Subject: TRade Secrets Questionnaire

Dear

We are working on the revised version of the questionnaire and we will soon send it to you.

We would like to thank you for the your comments and suggestions, that greatly improved it and helped to make it clearer.

My little concern is the following, and I would like to get your response on this (and possibly that of

The revised questions for the part E (Added value of a legislative proposal) represent a strong twist with respect to the possibility uses of the questionnaire for policy purposes.

In the previous version, the questions tried to elicit information on the benefits of the proposed legislation for the respondent's company. This piece of information could have contributed to a cost/benefit analysis of the legislation, in line with RIA.

In the new version, the questionnaire is turned into an **opinion poll**: the respondents is asked to provide his/her personal opinion on whether proposed legislation is beneficial to the economy in general. I am not sure that this type of information is what RIA requires. The new questions capture a mixture of political and economic views of the world (e.g. political: about the role of the commission. economic: on whether stronger IPRs cause an increase in R&D). My impression is that this type of questions would better suit business associations, which express collective views on the issue.

I understand that you are in the best position to know which approach better fits the goals of this questionnaire.

Just wanted to point out a potential weakness of the questionnaire for the future (tough) RIA.
Look forward to talk to you on Thursday.
Yours, Luigi

