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81

(GROW)

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 19 November 2012 10:47  
**To:** (MARKT)  
**Subject:** RE: homework  
**Attachments:** Full Survey Questionnaire online.docx

Hi

here you are.

Have a nice day,  
Francesca

Francesca Gaudino  
Counsel

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



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**From:** @ec.europa.eu [mailto: @ec.europa.eu]  
**Sent:** lunedì 19 novembre 2012 08:55  
**To:** Gaudino, Francesca  
**Subject:** FW: homework

Hi Francesca

Thanks for your efforts but the version sent by Prof. Franzoni is not the definitive one – as there was some final editing

So I need to come back to you to ask for the very definitive version.

Thanks

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:** Luigi Alberto Franzoni [mailto:luigi.franzoni@unibo.it]  
**Sent:** Friday, November 16, 2012 1:39 PM  
**To:** (MARKT)  
**Cc:** Gaudino, Francesca  
**Subject:** I: homework

Dear \_\_\_\_\_ Please find attached the last version of the survey (that I have).  
I know that English has later been professionally edited, but with no variation on the content.  
Yours, Luigi

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

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## Full Survey Questionnaire

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

#### **Purpose of the Survey**

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

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

#### **Confidential business information and Trade secrets**

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

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

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

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

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

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](http://ec.europa.eu/internal_market/iprenforcement/index_en.htm)

You can read 'The story behind trade secrets' as proposed by the European Commission at the following web page:  
[http://ec.europa.eu/internal\\_market/smn/smn63/docs/smn63web\\_en.pdf#page=16](http://ec.europa.eu/internal_market/smn/smn63/docs/smn63web_en.pdf#page=16)

We would be grateful if you could complete the Survey questionnaire before December 7, 2012. To complete the survey, please send an email at the following address: [tradesecretstudy@bakermckenzie.com](mailto:tradesecretstudy@bakermckenzie.com).

For any query or to request detailed information on the survey, please contact us at: [tradesecretstudy@bakermckenzie.com](mailto: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 it is expressly specified that multiple choices are allowed – that best represent(s) your position.

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

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

Information necessary to reply to the following questions may come from different areas of your company. The final response however should generally be coordinated 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 trade secrets and confidential business information are and make sure you are familiar with these issues. If yes, please start answering the questions below. 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 your General Counsel, CEO, Chief IP Counsel or 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** and **confidential business information (TS/CBI)** are 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 for its competitiveness and which it keeps confidential?

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

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

#### *Technical information*

- |  |                              |                                 |                               |
|--|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> R&D data (projects, results, etc.)  | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Process know-how and technology (manufacturing processes, software, devices, plants design) | <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"/> Product technology  | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

#### *Business information*

- |   |                              |                                 |                               |
|---|------------------------------|---------------------------------|-------------------------------|
| <input type="checkbox"/> Customer or supplier lists and related data (satisfaction surveys, customer profiling, etc.) | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Commercial bids and contracts, contractual terms   | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Marketing data and planning (advertising, market surveys, sales figures and forecasts)       | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Financial information & business planning  | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Other technical / business data (indicate): _____  | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |

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

- ☐ N/A   ☐ Low   ☐ Medium   ☐ High

A.4 To what extent does your company rely on other intellectual property rights?

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

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

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

- ☐ Yes, regularly
- ☐ Yes, occasionally
- ☐ Never

A.7 In cases where your company does not share TS/CBI with other parties, this is because:  
(Tick all boxes that apply)

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

**Section B – Threats to your trade secrets**

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

- |  |                              |                                 |                               |
|--|------------------------------|---------------------------------|-------------------------------|
| <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"/> Employee 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"/> Scientific journals and trade/technical publications    | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Espionage   | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |



- ☐ Divulgence requested by regulatory authorities
- ☐ Low    ☐ Medium    ☐ High

B.2 To what extent do the following persons/players pose a risk of unauthorized access, disclosure, use or leakage of the TS/CBI of your company? (Tick 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"/> Competitors   | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Customers/clients   | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Internal/external consultants   | <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"/> Regulatory agencies   | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input type="checkbox"/> High |
| <input type="checkbox"/> Others having access to the premises (cleaning companies, electricians, 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 Over the last 10 years, the risk of exposure to TS/CBI misappropriation for your company has:

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

### **Section C – Protection and misappropriation of your trade secrets**

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

- ☐ Yes
- ☐ No
- ☐ No opinion
- ☐ Not concerned

C.2 Over the last 10 years, did your company suffer attempts or acts of misappropriation of TS/CBI?

Within the EU

- ☐ None that we are aware of
- ☐ 1 to 5 times
- ☐ More than 5 times

Outside the EU

- ☐ None that we are aware of
- ☐ 1 to 5 times
- ☐ More than 5 times

*If your company did not suffer attempts or acts of misappropriation please jump to question D.5 [\[link\]](#)*

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

- ☐ Current Employees
- ☐ Former Employees
- ☐ Competitors
- ☐ Customers/clients
- ☐ Internal/external consultants
- ☐ Suppliers/business partners
- ☐ Regulatory agencies
- ☐ Others having access to the premises (cleaning companies, electricians, etc.)
- ☐ Other (please specify) \_\_\_\_\_

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

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

#### **Section D – Litigation before EU courts to protect and defend your trade secrets**

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

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

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

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

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

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

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

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

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

In the EU

- ☐ Yes
- ☐ No

Outside the EU

- ☐ Yes
- ☐ No

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

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

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

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

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

**E.3 Positive or negative effects for your company from possible EU common rules on the protection of TS/CBI from misappropriation? (Tick all boxes that apply)**

*Positive effects*

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

*Negative effects*

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

**Section F – Your Company**

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

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

☐ Yes

☐ No

F.3 Your country (from computer list)

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

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

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

☐ Yes

☐ No

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

€ \_\_\_\_\_

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

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### **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 secret/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 get 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.**

**81 bis**





(GROW)

81615

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 19 November 2012 12:56  
**To:** (MARKT)  
**Cc:** (MARKT); (MARKT); (MARKT);  
**Subject:** Initial feedback of the survey

Dear

This is to provide you with some initial feedback of the survey. I just finished a meeting with our working group and initial results seem to be positive in terms of response rate.

The external survey is also going on and we have already received a number of requests.

We will keep you posted.

Kind regards,  
Francesca

Francesca Gaudino  
Counsel

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



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81ter





EUROPEAN COMMISSION  
Internal Market and Services DG

RESOURCES AND COMMUNICATION  
Financial Resources and Internal control

81 ter

Brussels, 28 NOV. 2012  
Markt/A2/ASV/jg/1628142

**Studio Professionale**  
Mr Lorenzo De Martinis  
Piazza Filippo Meda, 3  
IT – 20121 Milan

**Subject: Addendum n°1 to service contract: MARKT/2011/128/D3/ST/OP**

Dear Mr De Martinis,

Please find enclosed a signed and dated copy of the above-mentioned addendum.

Yours sincerely,

REDACTED





EUROPEAN COMMISSION  
Internal Market and Services Directorate General

Ref. Ares(2012)1406893 - 28/11/2012

RESSOURCES AND COMMUNICATION  
Financial Resources and Internal control

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**ADDENDUM N°1 TO**  
**SERVICE CONTRACT – MARKT/2011/128/D3/ST/OP**

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

of the one part,

and

Studio Professionale Associato a Baker & McKenzie  
Professional Association

Registration No [ ]

Piazza Filippo Meda, 3  
IT - 20121 Milan

VAT registration No [ ]

(hereinafter referred to as "the Contractor"), represented for the purposes of the signature of this contract by Mr Lorenzo De Martinis, Principal,

of the other part,



HAVE AGREED AS FOLLOWS:

Article I.2.3 is modified as follows:

**I.2.3.** The duration of the tasks shall not exceed the date of **09/02/2013**. This period and all other periods specified in the Contract are calculated in calendar days. Execution of the tasks shall start from date of entry into force of the Contract.

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

The rest of the contract remains unchanged

## SIGNATURES

For the Contractor,

Mr Lorenzo De Martinis

Principal

For the Commission,

[ ]

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

Signature: [ ]

Done at Milan, on 6 nov. 2012

Signature: [ ]

Done at Brussels, on 27/11/12

In duplicate in English.

82



(GROW)

82

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 05 December 2012 17:51  
**To:**  
**Cc:** MARKET);  
**Subject:** RE: Trade Secrets & CBI Survey

Dear

this is to confirm you that all the companies that you listed have replied to the survey; Alstom for Belgium (not France).

Kind regards,  
Francesca

---

**From:** [mailto:r@hkstrategies.com]  
**Sent:** mercoledì 5 dicembre 2012 16:49  
**To:** Gaudino, Francesca  
**Cc:** @ec.europa.eu;  
**Subject:** RE: Trade Secrets & CBI Survey

Ok, thanks. Let me know if one is missing and we'll alert them.

---

**From:** Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]  
**Sent:** mercredi 5 décembre 2012 16:29  
**To:** .  
**Cc:** @ec.europa.eu; ;  
**Subject:** RE: Trade Secrets & CBI Survey

We are processing the data received, I will check this.

Kind regards,  
Francesca

---

**From:** [mailto: @hkstrategies.com]  
**Sent:** mercoledì 5 dicembre 2012 15:56  
**To:** Gaudino, Francesca  
**Cc:** @ec.europa.eu; ;  
**Subject:** RE: Trade Secrets & CBI Survey

Sorry – in the end did you receive Alstom, DuPonts and Michelin's replies ? If not we'll get in touch with them immediately.

---

**From:** Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]  
**Sent:** mercredi 5 décembre 2012 15:50  
**To:** ,  
**Cc:** @ec.europa.eu;  
**Subject:** RE: Trade Secrets & CBI Survey

Dear

please see below the information on the companies you are interested in.

- GE - Mr. (Switzerland) – the survey has been sent to us via mail and on December 4 we uploaded it on the survey server - we also provide this additional opportunity to foster participation of companies.



- ALSTOM
- INTEL
- Michelin
- DuPont

Many thanks for confirming that these have been taken into account - although some may have passed the 3<sup>rd</sup> December deadline.

Best wishes,

*on behalf of the Trade Secret & Innovation Coalition*

---

Director

@hkstrategies.com

D : +32 2

M : +32

F : +32 2737 95 01

**HILL+KNOWLTON**  
STRATEGIES

Hill+Knowlton Strategies

<http://www.hkstrategies.com>

**Hill+Knowlton Strategies is signed up to the European Transparency Register and Code of Conduct**  
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<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=3183894853-03>

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83





(GROW)

83

**From:** (MARKT)  
**Sent:** 05 December 2012 18:14  
**To:** 'Gaudino, Francesca'  
**Cc:** (MARKT); (MARKT); (MARKT); de  
**Subject:** Martinis, Lorenzo;  
RE: Trade Secrets Study - Survey (MARKT)

Dear Francesca,

I agree with

I have a couple of questions.

Are the answers sufficiently balanced in geographical/size terms to meet the expectations of Prof. Franzoni (cf. his references to the Oslo methodology)?

Also, the question you are probably expecting: when will you be able to share with us some provisional data on the survey (e.g. statistical data without analysis)?

Regards,

---

**From:** (MARKT)  
**Sent:** Wednesday, December 05, 2012 6:10 PM  
**To:** 'Gaudino, Francesca'  
**Cc:** (MARKT); (MARKT); (MARKT);  
(MARKT); de Martinis, Lorenzo  
**Subject:** RE: Trade Secrets Study - Survey

That are very good news Francesca  
Well done!

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

---

**From:** Gaudino, Francesca [mailto:Francesca.Gaudino@bakermckenzie.com]  
**Sent:** Wednesday, December 05, 2012 6:00 PM  
**To:** (MARKT)  
**Cc:** (MARKT); (MARKT); (MARKT);  
(MARKT); de Martinis, Lorenzo  
**Subject:** Trade Secrets Study - Survey

Dear

This is to inform you that yesterday we closed the survey and we went beyond the 442 target as we received 537 fully completed questionnaires.

With 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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84



**From:** (MARKT)  
**Sent:** 11 December 2012 17:27  
**To:** Gaudino, Francesca (Francesca.Gaudino@bakermckenzie.com)  
**Cc:** (MARKT); (MARKT); (MARKT);  
**Subject:** (MARKT); (MARKT)  
Public Consultation on Trade Secrets

Dear Francesca,

For your information, we have just launched today a public consultation on trade secrets.

Unlike your survey, this consultation is open to all citizens and all sorts of organisation (business organisations, unions, consumers, etc.), and it is a requirement for our preparatory work on a possible proposal.

It would of course be important to have again the views of the maximum possible number of companies from all sizes, sectors and different geographic locations.

[http://ec.europa.eu/internal\\_market/iprenforcement/trade\\_secrets/index\\_en.htm](http://ec.europa.eu/internal_market/iprenforcement/trade_secrets/index_en.htm)

In the meantime we are looking forward to receive your draft of the study and the results of the survey this Friday.

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](mailto:@ec.europa.eu)



85





(GROW)

85

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 13 December 2012 17:51  
**To:** (MARKT); in (MARKT)  
**Cc:** de Martinis, Lorenzo; (MARKT); (MARKT);  
(MARKT)  
**Subject:** Trade Secrets Study - Final Interim Study  
**Attachments:** Trade Secrets Study - Final Interim Study.pdf  
**Importance:** High

Dear

Please find attached the Final Interim Study, pdf and word versions. If you wish to have any other documents in word format, please let me know.

I am sending the Appendixes with separate messages to allow smoother receipt.

The missing parts are the French and German translations of the executive summary, that will be provided once you agree on the final version of the same and the presentation of the study, as we would need to know the exact content of the presentation (*i.e.* if covering the work performed or also the main findings of the same) as well as the intended use of the presentation (*i.e.* internal use only or dissemination purposes).

With kind regards,  
Francesca

Francesca Gaudino  
Counsel

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3, Piazza Filippo Meda  
20121 Milan, Italy  
Tel: +39 02.76.231.1  
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**Document 85a : removed**



86



(GROW)

86

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 13 December 2012 17:51  
**To:** (MARKT): \_ (MARKT)  
**Cc:** de Martinis, Lorenzo: (MARKT); (MARKT); (MARKT);  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 1 to 4  
**Attachments:** Appendix 1 - IP and Commercial Law - Country Reports.pdf; Appendix 2 - Competition Law - Country Reports.pdf; Appendix 3 - Criminal Law - Country Reports.pdf; Appendix 4 - References.pdf  
  
**Importance:** High

Second message.

Appendixes 1 to 4.

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Fax: + 39 02.76.231.501



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**Documents 86a, 86b and 86c : removed**



**For document 86d, see doc. 131d :**

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87



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87

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 13 December 2012 17:52  
**To:** (MARKT); E. (MARKT)  
**Cc:** de Martinis, Lorenzo (MARKT); (MARKT); (MARKT);  
MARKT)  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 9 to 12  
**Attachments:** Appendix 9 - List of Contributors.pdf; Appendix 10 - Summary Charts – IP and  
Commercial Law.pdf; Appendix 11 - Summary Charts - Competition Law.pdf; Appendix 12  
- Summary Charts - Criminal Law.pdf  
  
**Importance:** High

Fourth message.

Appendixes 9 to 12.

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**Documents 87a and 87b : removed**



**For documents 87c and 87d, see docs. 133c and 133d :**

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88



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88

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 13 December 2012 17:52  
**To:** (MARKT); (MARKT)  
**Cc:** de Martinis, Lorenzo; (MARKT); (MARKT); (MARKT);  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 13 to 15  
**Attachments:** Appendix 13 - Survey Questionnaire.pdf; Appendix 14 - Report on Pilot Survey.pdf;  
Appendix 15.1 Presentation of L. de Martinis.pdf; Appendix 15.2 Presentation of Dr. T. Respass.pdf; Appendix 15.3 Presentation of Prof L. Franzoni.pdf  
**Importance:** High

Fifth message.

Appendixes 13 to 15.

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Fax: + 39 02.76.231.501



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**For documents 88a to 88e, see docs. 134a to 134e :**

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89



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89

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 13 December 2012 17:52  
**To:** (MARKT); (MARKT)  
**Cc:** de Martinis, Lorenzo; (MARKT); (MARKT);  
(MARKT)  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 16 and 17  
**Attachments:** Appendix 16 - Summary Report on Brussels Conference.pdf; Appendix 17 - Full Survey Report.pdf  
**Importance:** High

Sixth message.

Appendixes 16 and 17.

Francesca Gaudino  
Counsel

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**For document 89a, see doc. 135a :**

**Published in website**





**Document 89b : removed**



90



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90

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 13 December 2012 17:58  
**To:** (MARKT); (MARKT)  
**Cc:** de Martinis, Lorenzo; (MARKT); (MARKT); (MARKT);  
(MARKT)  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 5 and 6  
**Attachments:** Appendix 5 - Legal Matrices.pdf; Appendix 6 - Country Specific Questionnaires - IP & Commercial Law.pdf  
**Importance:** High

I got an undeliverable message for Annexes from 5 to 8 so I am resending them in two separate messages.

---

**From:** Gaudino, Francesca  
**Sent:** giovedì 13 dicembre 2012 17:52  
**To:** @ec.europa.eu; @ec.europa.eu  
**Cc:** de Martinis, Lorenzo; @ec.europa.eu; @ec.europa.eu;  
@ec.europa.eu  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 5 to 8  
**Importance:** High

Third message.

Appendixes 5 to 8.

Francesca Gaudino  
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Fax: + 39 02.76.231.501



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**For documents 90a and 90b, see docs.**

**132a and 132b:**

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91



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(91)

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 13 December 2012 17:59  
**To:** (MARKT); (MARKT)  
**Cc:** de Martinis, Lorenzo; (MARKT); (MARKT);  
(MARKT)  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 7 and 8  
**Attachments:** Appendix 7 - Country Specific Questionnaires - Competition Law.pdf; Appendix 8 - Country Specific Questionnaires - Criminal law.pdf  
**Importance:** High

---


**From:** Gaudino, Francesca  
**Sent:** giovedì 13 dicembre 2012 17:52  
**To:** [ec.europa.eu](mailto:ec.europa.eu); [ec.europa.eu](mailto:ec.europa.eu)  
**Cc:** de Martinis, Lorenzo; [ec.europa.eu](mailto:ec.europa.eu); [ec.europa.eu](mailto:ec.europa.eu)  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 5 to 8  
**Importance:** High

Third message.

Appendixes 5 to 8.


Francesca Gaudino  
Counsel

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Baker & McKenzie  
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20121 Milan, Italy  
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**For documents 91a and 91b, see docs.  
132c and 132d:**

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92





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92

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 14 December 2012 11:28  
**To:** (MARKT)  
**Cc:** de Martinis, Lorenzo; (MARKT); (MARKT); (MARKT); MARKT);  
**Subject:** Trade Secrets Study - List of survey participants  
**Attachments:** Full Survey - List of Participants.pdf

Dear

We are glad you received all the documents.

For the sake of completeness, I am sending you the list of companies that participated to the survey. The list contains 452 entries as not all the companies authorized registration of their names.

With 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:** venerdì 14 dicembre 2012 11:13  
**To:** Gaudino, Francesca  
**Cc:** de Martinis, Lorenzo; @ec.europa.eu; @ec.europa.eu;  
@ec.europa.eu; @ec.europa.eu  
**Subject:** RE: Trade Secrets Study - Final Interim Study - Appendixes 7 and 8

Dear Francesca

Thank you for the draft of the final study

On a first glance it seems that we have received everything – that is, the main document plus the annexes 1 to 17.

Best regards

---

**From:** Gaudino, Francesca [<mailto:Francesca.Gaudino@bakermckenzie.com>]  
**Sent:** Thursday, December 13, 2012 5:59 PM  
**To:** (MARKT); (MARKT)  
**Cc:** de Martinis, Lorenzo; (MARKT); (MARKT);  
(MARKT)  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 7 and 8  
**Importance:** High

---

**From:** Gaudino, Francesca  
**Sent:** giovedì 13 dicembre 2012 17:52  
**To:** [@ec.europa.eu](mailto:@ec.europa.eu)); [@ec.europa.eu](mailto:@ec.europa.eu)  
**Cc:** de Martinis, Lorenzo; [@ec.europa.eu](mailto:@ec.europa.eu); [@ec.europa.eu](mailto:@ec.europa.eu); [@ec.europa.eu](mailto:@ec.europa.eu);  
[@ec.europa.eu](mailto:@ec.europa.eu)  
**Subject:** Trade Secrets Study - Final Interim Study - Appendixes 5 to 8  
**Importance:** High

Third message.

Appendixes 5 to 8.

Francesca Gaudino  
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**Document 92a : removed**



93



93

Dear Francesca  
I am forwarding the attached documents from another company that apparently tried to participate at the survey,  
without success.  
Regards

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

**From:** [mailto:\_\_\_\_\_@aim.be]  
**Sent:** Friday, December 14, 2012 10:44 AM  
**To:** \_\_\_\_\_ (MARKT); \_\_\_\_\_ (MARKT)  
**Cc:** \_\_\_\_\_  
**Subject:** Trade secrets

Dear      dear

One of our large French corporate members tried to reply to the trade secrets survey online, but unfortunately did not receive the link and password. They have instead answered the survey in hard copy; please find it attached in pdf.

Kind regards

Senior Brand Protection Manager  
AIM - European Brands Association  
tel: +32 2 736 11 11  
fax: +32 2 734 11 11  
[info@aim.be](mailto:info@aim.be)  
[www.aim.be](http://www.aim.be)





93a

## Full Survey Questionnaire

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

#### **Purpose of the Survey**

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

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

#### **Confidential business information and Trade secrets**

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

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

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

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

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



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](http://ec.europa.eu/internal_market/iprenforcement/index_en.htm)

You can read 'The story behind trade secrets' as proposed by the European Commission at the following web page:  
[http://ec.europa.eu/internal\\_market/smn/smn63/docs/smn63web\\_en.pdf#page=16](http://ec.europa.eu/internal_market/smn/smn63/docs/smn63web_en.pdf#page=16)

We would be grateful if you could complete the Survey questionnaire before December 7, 2012. To complete the survey, please send an email at the following address:  
[tradeseecretstudy@bakermckenzie.com](mailto:tradeseecretstudy@bakermckenzie.com).

For any query or to request detailed information on the survey, please contact us at:  
[tradeseecretstudy@bakermckenzie.com](mailto:tradeseecretstudy@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 it is expressly specified that multiple choices are allowed - that best represent(s) your position.

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

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

Information necessary to reply to the following questions may come from different areas of your company. The final response however should generally be coordinated 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 trade secrets and confidential business information are and make sure you are familiar with these issues. If yes, please start answering the questions below. 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 your General Counsel, CEO, Chief IP Counsel or 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** and **confidential business information (TS/CBI)** are 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 for its competitiveness and which it keeps confidential?

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

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

#### *Technical information*

- |  |                              |                                 |  |
|--|------------------------------|---------------------------------|--|
| <input type="checkbox"/> R&D data (projects, results, etc.)  | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input checked="" type="checkbox"/> High |
| <input type="checkbox"/> Process know-how and technology (manufacturing processes, software, devices, plants design) | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input checked="" type="checkbox"/> High |
| <input type="checkbox"/> Formulae and recipes  | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input checked="" type="checkbox"/> High |
| <input type="checkbox"/> Product technology  | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input checked="" type="checkbox"/> High |

#### *Business information*

- |   |                              |                                 |  |
|---|------------------------------|---------------------------------|--|
| <input type="checkbox"/> Customer or supplier lists and related data (satisfaction surveys, customer profiling, etc.) | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input checked="" type="checkbox"/> High |
| <input type="checkbox"/> Commercial bids and contracts, contractual terms   | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input checked="" type="checkbox"/> High |
| <input type="checkbox"/> Marketing data and planning (advertising, market surveys, sales figures and forecasts)       | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input checked="" type="checkbox"/> High |
| <input type="checkbox"/> Financial information & business planning  | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input checked="" type="checkbox"/> High |
| <input type="checkbox"/> Other technical / business data (indicate): _____  | <input type="checkbox"/> Low | <input type="checkbox"/> Medium | <input checked="" type="checkbox"/> High |

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

- ☐ N/A   ☐ Low   ☐ Medium   ☒ High





A.4 To what extent does your company rely on other intellectual property rights?

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

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

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

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

☒ Yes, regularly  
☐ Yes, occasionally  
☐ Never

A.7 In cases where your company does not share TS/CBI with other parties, this is because:  
(Tick all boxes that apply)

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

## **Section B – Threats to your trade secrets**

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

<input checked="" type="checkbox"/> Clients or customers	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input checked="" type="checkbox"/> High
<input checked="" type="checkbox"/> Suppliers of equipment, materials, services or software	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input checked="" type="checkbox"/> High
<input checked="" type="checkbox"/> Reverse engineering	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High
<input checked="" type="checkbox"/> Employee mobility	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input checked="" type="checkbox"/> High
<input checked="" type="checkbox"/> Conferences, trade fairs, exhibitions	<input checked="" type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High
<input checked="" type="checkbox"/> Scientific journals and trade/technical publications	<input checked="" type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High
<input checked="" type="checkbox"/> Espionage	<input checked="" type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High



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☐ Divulgarion requested by regulatory authorities

☐ Low ☒ Medium ☐ High

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

<input checked="" type="checkbox"/> Current Employees	<input checked="" type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High
<input checked="" type="checkbox"/> Former Employees	<input type="checkbox"/> Low	<input type="checkbox"/> Medium	<input checked="" type="checkbox"/> High
<input checked="" type="checkbox"/> Competitors	<input checked="" type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High
<input checked="" type="checkbox"/> Customers/clients	<input type="checkbox"/> Low	<input checked="" type="checkbox"/> Medium	<input type="checkbox"/> High
<input checked="" type="checkbox"/> Internal/external consultants	<input type="checkbox"/> Low	<input checked="" type="checkbox"/> Medium	<input type="checkbox"/> High
<input checked="" type="checkbox"/> Suppliers/business partners	<input type="checkbox"/> Low	<input checked="" type="checkbox"/> Medium	<input type="checkbox"/> High
<input checked="" type="checkbox"/> Regulatory agencies	<input checked="" type="checkbox"/> Low	<input type="checkbox"/> Medium	<input type="checkbox"/> High
<input checked="" type="checkbox"/> Others having access to the premises (cleaning companies, electricians, etc.)	<input checked="" 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 Over the last 10 years, the risk of exposure to TS/CBI misappropriation for your company has:

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

### Section C – Protection and misappropriation of your trade secrets

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

☒ Yes  
☐ No  
☐ No opinion  
☐ Not concerned



C.2 Over the last 10 years, did your company suffer attempts or acts of misappropriation of TS/CBI?

Within the EU

- ☐ None that we are aware of
- ☐ 1 to 5 times
- ☒ More than 5 times

Outside the EU

- ☐ None that we are aware of
- ☐ 1 to 5 times
- ☒ More than 5 times

*If your company did not suffer attempts or acts of misappropriation please jump to question D.5 [link]*

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

- ☐ Current Employees
- ☒ Former Employees
- ☒ Competitors
- ☒ Customers/clients
- ☐ Internal/external consultants
- ☐ Suppliers/business partners
- ☒ Regulatory agencies
- ☐ Others having access to the premises (cleaning companies, electricians, etc.)
- ☐ Other (please specify) \_\_\_\_\_

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

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

#### **Section D – Litigation before EU courts to protect and defend your trade secrets**

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

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

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



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

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

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

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

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

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

In the EU

- ☒ Yes
- ☐ No

Outside the EU

- ☒ Yes
- ☐ No





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

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

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

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

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

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**E.3 Positive or negative effects for your company from possible EU common rules on the protection of TS/CBI from misappropriation? (Tick all boxes that apply)**

*Positive effects*

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

*Negative effects*

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

**Section F – Your Company**



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

---

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

☒ Yes

☐ No

F.3 Your country (from computer list)

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

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

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

☒ Yes

☐ No

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

€ 20.8

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

100.000

### 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 secret/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 get in touch.

Name of respondent: \_\_\_\_\_ Names of respondents will be kept strictly confidential

Position in the company: RED DIRECTOR

E-mail address (optional):

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





.....

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(GROW)

94

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 17 December 2012 15:58  
**To:** (MARKT)  
**Cc:** (MARKT); --- (MARKT);  
(MARKT); (MARKT)  
**Subject:** RE: Annex 17 Full Survey Report  
**Attachments:** Appendix 17 - Full Survey Report.xlsx

Dear

yes, transformation in pdf format has changed the original file content.  
Please find attached the file in excel format, which contains the full data set.

I am not sure what is the report presentation mentioned in your below message. The report on the full survey should be covered by Section IV. Consultation and Section V. Findings.

With 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 17 dicembre 2012 14:57  
**To:** Gaudino, Francesca  
**Cc:** @ec.europa.eu; @ec.europa.eu; @ec.europa.eu;  
@ec.europa.eu  
**Subject:** Annex 17 Full Survey Report

Dear Francesca

Annex 17 is not complete. There is text missing in the questions, there is no breakdown per country (except in some cases for Austria and Belgium).

This is we think the result of converting it into to a pdf file.

Thus, the presentation of this report will need to be worked out in the final report.

In the meantime we would like to have the full data – would you have it an Excel sheet?

Regards,

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:)

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**Document 94a : removed**



95







(GROW)

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 14 January 2013 18:59  
**To:** (MARKT)  
**Cc:** (MARKT); (MARKT); (MARKT);  
**Subject:** RE: Data of the Survey and some initial comments  
**Attachments:** 2012-166kx Db10 Unito.xls; Trade Secrets Study - Final Interim Study.docx

Dear

Please find attached the survey row data and the word format of the study. Please let me know if you need further material.

Thanks for anticipating some comments.

With 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 14 gennaio 2013 18:14  
**To:** Gaudino, Francesca  
**Cc:** @ec.europa.eu; @ec.europa.eu; @ec.europa.eu;  
@ec.europa.eu  
**Subject:** Data of the Survey and some initial comments

Dear Francesca

I am writing to you mainly because we still need more data in relation to the survey. Basically, we need the full raw data, that is, the individual replies provided by respondents. We do not want their identities, or the names of the companies, but we need all the replies so that we can assess the results properly and focus on the responses given by companies with certain profiles – for example those that use trade secrets more intensively, or those who have experienced TS misappropriation and so on. According to the tender specifications "the consultants will also provide a PowerPoint presentation that will summarize the main findings of the study as well as an easy to use database of the survey results".

I take the opportunity to send you some preliminary comments on the draft in particular on the structure and on the executive summary. In order to make comments on the rest of the study we would need a word version of the study otherwise this becomes very time consuming for us and for you.

Best regards

**The rest of the document has been removed**



**Documents 95a and 95b : removed**



97

96

97

(GROW)

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 31 January 2013 11:36  
**To:** MARKT)  
**Cc:** MARKT); MARKT); MARKT);  
**Subject:** (MARKT); (MARKT); de Martinis, Lorenzo  
RE: Comments to Baker and McKenzie  
**Importance:** High

Dear

In order to make sure that we are duly addressing your comments, we would kindly ask for a clarification on the Executive Summary.

You have underlined that the Executive Summary of the Final Study [REDACTED]

In the previous version of the Study, [REDACTED]  
following your indications to [REDACTED]

If we understand it correctly, now you are suggesting to [REDACTED]


Is this correct?

Thanks in advance for your input.

With 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] On Behalf Of  
**Sent:** martedì 29 gennaio 2013 12:00  
**To:** de Martinis, Lorenzo; Gaudino, Francesca  
**Cc:** @ec.europa.eu;  
@ec.europa.eu; @ec.europa.eu;  
**Subject:** Comments to Baker and McKenzie

96

Dear Francesca



Please find below our comments on the draft of the final report.

Best regards



European Commission  
DG MARKT  
Unit D3

SPA 2 -  
B-1049 Brussels/Belgium  
+32 2 29

[ec.europa.eu](http://ec.europa.eu)



REDACTED

**The rest of the document has been removed**



98



(GROW)

99

**From:** Gaudino, Francesca <Francesca.Gaudino@bakermckenzie.com>  
**Sent:** 04 February 2013 22:54  
**To:** (MARKT); (MARKT)  
**Cc:** (MARKT); (MARKT); ARKT);  
**Subject:** (MARKT); de Martinis, Lorenzo  
**Attachments:** R: Comments to Baker and Mckenzie  
image001.jpg

Dear

Thanks for your message.

The authors will go through your comments and in case further clarifications are needed we may organize a conference call.

If you were referring also to a call with me and Lorenzo on organizational matters, please let me know so we can find a convenient time to speak.

With kind regards,  
Francesca

Da: \_@ec.europa.eu [ @ec.europa.eu]

Inviato: lunedì 4 febbraio 2013 18.31

A: Gaudino, Francesca: ' @ec.europa.eu

Cc: \_ec.europa.eu; @ec.europa.eu, \_ ec.europa.eu; de

Martinis, Lorenzo

Oggetto: RE: Comments to Baker and Mckenzie

Dear Francesca,

5

REDACTED

41

REDACTED

I remain at your disposal for any clarification you may need; it might be useful to have a phone call at some point this week.

Best regards

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EUROPEAN COMMISSION

Internal Market and Services DG

D3 - Fight against counterfeiting and piracy

Rue de Spa 2, B-1049 Brussels

Tel. (+32) 22 9

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

Sent: Thursday, January 31, 2013 11:36 AM

To: B (MARKT)

Cc. (MARKT); ARKT); (MARKT);

(MARKT); de Martinis, Lorenzo

Subject: RE: Comments to Baker and Mckenzie

Importance: High

Dear

In order to make sure that we are duly addressing your comments, we would kindly ask for a clarification on the Executive Summary.

You have underlined that the Executive Summary of the Final Study

REDACTED

In the previous version of the Study, following your indications to

If we understand it correctly, now you are suggesting to

Is this correct?

Thanks in advance for your input.

With kind regards,  
Francesca

Francesca Gaudino  
Counsel

Studio Professionale Associato a  
Baker & McKenzie  
3, Piazza Filippo Meda  
20121 Milan, Italy  
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From: .@ec.europa.eu<mailto: .@ec.europa.eu>  
[mailto: .@ec.europa.eu] On Behalf Of .@ec.europa.eu  
Sent: martedì 29 gennaio 2013 12:00  
To: de Martinis, Lorenzo; Gaudino, Francesca  
Cc: .@ec.europa.eu<mailto: .IS@ec.europa.eu>;  
ec.europa.eu<mailto: @ec.europa.eu>;  
ec.europa.eu<mailto: @ec.europa.eu>;  
@ec.europa.eu<mailto: @ec.europa.eu>  
Subject: Comments to Baker and Mckenzie

Dear Francesca

Please find below our comments on the draft of the final report.

Best regards

[cid:image001.jpg@01CE0305.CAE4DFC0]  
European Commission  
DG MARKT  
Unit D3



SPA2 -

B-1049 Brussels/Belgium

+32 2 29

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REDACTED

The rest of the document has been removed

