en

News | 07.04.2016

Trade Secrets

Must not outweigh the public interest

60 SECOND OVERVIEW

In many of the biggest political scandals of the past months – Luxleaks, Dieselgate and now the **Panama Papers** – we saw **trade secret laws** abused as a shield against investigation and exposure of how corporations are harming the public good, avoiding taxes and endangering public safety. Whistleblowers find themselves fighting for their freedom in court – or in hiding. And yet, the European Parliament is about to **expand corporate secrecy and deter whistleblowing** by adopting the Trade Secrets Directive. The Greens/EFA group will **reject the directive** in the plenary vote on **Thu April 14th**, echoing the concerns by over half a million petition signatories across Europe (and counting) as well as civil society organisations including the Confederation of German Trade Unions, *Corporate Europe Observatory, Syndicat National des Journalistes and Whistleblower Netzwerk e.V.*

We have proposed delaying the vote until the directive can be packaged with a **Whistleblower Protection Directive**. In rejecting this proposal, the EPP and S&D groups are deciding to press on to broaden companies' abilities to keep important information away from the public eye and deter leaks while the Panama Papers continue to be front-page news. The Greens/EFA group have commissioned legal experts to create a draft Directive to establish minimum standards for the protection of whistle-blowers across Europe. The draft Directive will be launched at a public debate in Brussels on 4th May. For more information and to register, click here: http://bit.ly/1XiR5Wp



Effects of adopting the Directive

1. A right to hide wrongdoing • In many member states, the Trade Secrets Directive will **broadly expand the definition** of what kind of information may be protected. The new definition (Article 2) does not exclude e.g. information about illegal or harmful activities or pending investigations into such.
---------- **The overbroad trade secret definition**

- Any secret information
- that has commercial value to its holder because it is secret
- as long as effort has been made to keep it secret

---------- • **It provides a floor, but not a ceiling** for trade secret protection in the EU: Member states may have even further-reaching criminal law provisions. Existing criminal provisions are bound to be updated to cover the new broad definition, whereas the Directive's exceptions will not automatically apply to them. **Example:** Germany today requires companies to demonstrate a *legitimate interest* in what they claim as trade secrets. Only *business information* can be protected – ruling out protection i.e. for information about an ongoing investigation. These essential limitations would be dropped.

2. A chilling effect on whistleblowing

• The Directive will increase the ability of companies caught red-handed to **sue whistleblowers** and investigative journalists. It places the **burden of proof** of acting in the public interest on the whistleblower – and refers to the "general public interest", for which no common definition exists. • It does not preclude member states from **making whistleblowers criminals**. In January 2015, the French government attempted to introduce laws threatening 3 years in jail and a fine of €375,000 for disclosing trade secrets in anticipation of this Directive. While ultimately defeated, that attempt foreshadows the increased rigor we can expect to see in other member states. • Given with the massive power imbalance between whistleblowers (usually workers) and corporations who can afford protracted legal battles, this is bound to cause a significant chilling effect – even after the repeated demonstrations over the last few months that society increasingly relies on insiders to expose malpractice that evades national law enforcement and democratic oversight. **Example:** *Edward Snowden*'s revelations of massive global suspicion less surveillance would likely not meet the criteria of the Directive's whistleblower exception. **Example:** "It appears that you have had unauthorised access to proprietary documents and information taken from our company […] We trust that you are fully aware that using information/documentation unlawfully obtained is a crime, and we will not hesitate to pursue all available criminal and civil remedies." —*Mossack Fonseca, 3 April 2016*

3. Threats to public safety and oversight

• Because the Directive makes no distinction based on the purpose for which secret information is acquired, used or disclosed (Article 4), it does not just protect companies from corporate espionage, unfair competition etc., but also from many **legitimate needs to access unknown information**: **Example:** The German safety testing organisation *TÜV* was unable to inspect car engine software for emissions testing defeat devices because car manufacturers claimed trade secrets protection.

- Read the article

Example: In a French drug trial this year, a man died. When scientists requested access to crucial data to find out what happened, the sponsoring company refused, claiming trade secret protection.

- Read the article

Example: The EU based its controversial assessment that the active ingredient of *Monsanto*'s Roundup herbicide (glyphosate) is "unlikely" to cause cancer (contradicting WHO findings) in part on industry-

sponsored studies that are unavailable for examination by independent scientists due to trade secrets claims.

- Read the article

4. Threats to workers' rights and mobility

• In negotiations with the Council, an amendment was dropped that ensured knowledge gained on the job cannot be classified as a trade secret. This exposes workers to the **risk of being sued by their previous employer for 6 years** after changing jobs. While the Directive does not itself introduce sanctions against the disclosure of knowledge under these circumstances, it leaves member states open to do so.

Reactions by civil society

"They transformed a legislation which should have regulated fair competition between companies into something resembling a **blanket right to corporate secrecy**, which now threatens anyone in society who sometimes needs access to companies' internal information without their consent: consumers, employees, journalists, scientists…" — *Corporate Europe Observatory, European Network of Scientists for Social and Environmental Responsibility (ENSSER), Syndicat des Avocats de France (SAF), Syndicat National des Journalistes (SNJ), Tax Justice Network, Transparency International France, Whistleblower-Netzwerk e.V., Germany and over 40 further NGOs*

- Read the article

"The proposal […] bears **serious risk to consumers' and workers' interests, to the environment and to human rights**. The protection of whistleblowers – the majority of them are workers – will be insufficient […]. It is also disappointing that skills and expertise gained in the context of employment relationships can potentially be declared trade secrets." — *Annelie Buntenbach, German Trade Unions Confederation, Member of the Executive Board*

- Read the letter

Petitions

Over 100,000 signatures and counting
New secrecy rights for business? No Thanks!



521,557
Ne laissons pas les entreprises dicter l'info - Stop à la Directive Secret des Affaires !

Timeline

History • First proposed by the European Commission in November 2013 • Adopted with modest improvements by the Parliament's Legal Affairs Committee June 22, 2015 (Rapporteur: Constance Le Grip, EPP) • Negotiations with the Council (trilogue) produced the current compromise text, which the Legal Affairs Committee rubber-stamped on January 28, 2016. Several provisions mitigating criticisms detailed in this briefing were removed at this stage. **Conference of Presidents vote on postponement - Thu April 7, 11:00** Greens/EFA co-president Philippe Lamberts has requested to postpone the vote until the Commission will have proposed and the EP and Council adopted a parallel text on the **protection of whistleblowers**. The two would then be adopted as a package (similar to the one between PNR and data protection). Group chairpeople will vote on this proposal by weighted vote based on the number of Members in each political group. **Plenary debate - Mon April 11** To be confirmed

- Follow live

Plenary vote - Tue April 12 The text can no longer be changed. The Greens/EFA have filed an amendment to reject it outright (with the support of individual members of the GUE/NGL group). The vote will be final, leaving only the formality of Council adoption of the previously agreed-upon compromise.

- Follow live

Further information Julia Reda MEP (Pirate Party; Vice President Greens/EFA) julia.reda@ep.europa.eu / press@juliareda.eu **Christopher Clay**, spokesperson +32 483 57 65 30 Office Strasbourg +33 3 88 1 75732

Recommended

Press release

©jonathan-marchal

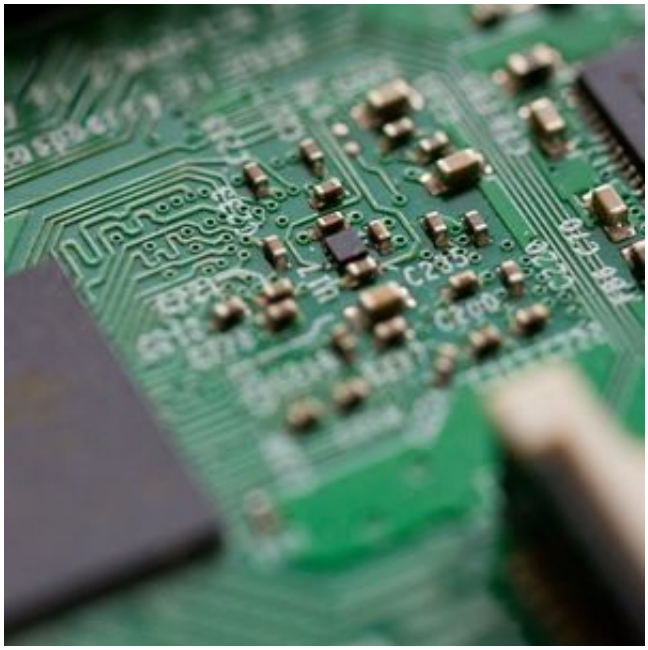


Tilly METZ elected European Parliament Vice-President

12.11.2026

Press release

chris-ried



[Digital Fairness Act falls short on addictive design]

11.11.2026

Press release



[Ukrainian children in Russia: Parliament to call for u…]

11.11.2026

Press release

Redek Kozak



[Czech public media under attack - with Markéta Gregoro…]

11.11.2026

Responsible MEPs



Felix Reda

Vice-President

Contact person



Pam Bartlett Quintanilla

Team leader - Outreach and campaigns

Please share

- E-Mail