

TRADE SECRETS FOSTER EU INNOVATION AND COMPETITIVENESS

Imagine you discover a product on the EU market with the exact same specifications as your own. You realize that your blueprints and production processes were stolen by a competitor who has not invested time or money into developing this know-how.

Imagine the theft took place at a trade fair in another EU Member State and that you are unfamiliar with the local legislation. To make matters worse, the competitor is manufacturing outside Europe at lower costs, where it is very difficult to prosecute local businesses. Your company and the jobs of your employees in the EU are now at risk.

WHAT ARE TRADE SECRETS? WHY ARE THEY IMPORTANT?

CONFIDENTIAL

A trade secret is a valuable piece of confidential information. It gives the company who developed it a competitive advantage over its rivals (e.g. through a particular innovative step). Trade secrets often take years to perfect through continual refinements but may not necessarily be patentable.

They are key for SMEs whose innovations are often incremental in nature. They often protect information that cannot be secured by other legal instruments. Such know-how can include state-of-the-art manufacturing processes, improved recipes, perfume formulas etc.

80%

Confidential know-how can represent a very large share of the value of a company's information portfolio.¹

10%

of important industrial innovations are patented - the rest rely on secrecy.²

75%

of businesses rank trade secrets as strategically important to business growth, competitiveness and innovative performance.³

WHAT IS THE PROBLEM WITH TRADE SECRET PROTECTION IN EUROPE?

A patchwork of EU Member State legislation on the protection of trade secrets stifles European innovation, competitiveness and therefore employment. It encourages unfair competition as manufacturers misappropriating trade secrets do not bear the financial burden of innovation.

In the current jigsaw of EU legislation, surveys highlight that businesses refrain from developing partnerships across borders or funding start-ups in markets with little or no protection for trade secrets.

25%

of companies reported theft of trade secrets in 2013 (vs. 18% in 2012).⁴

59.3%

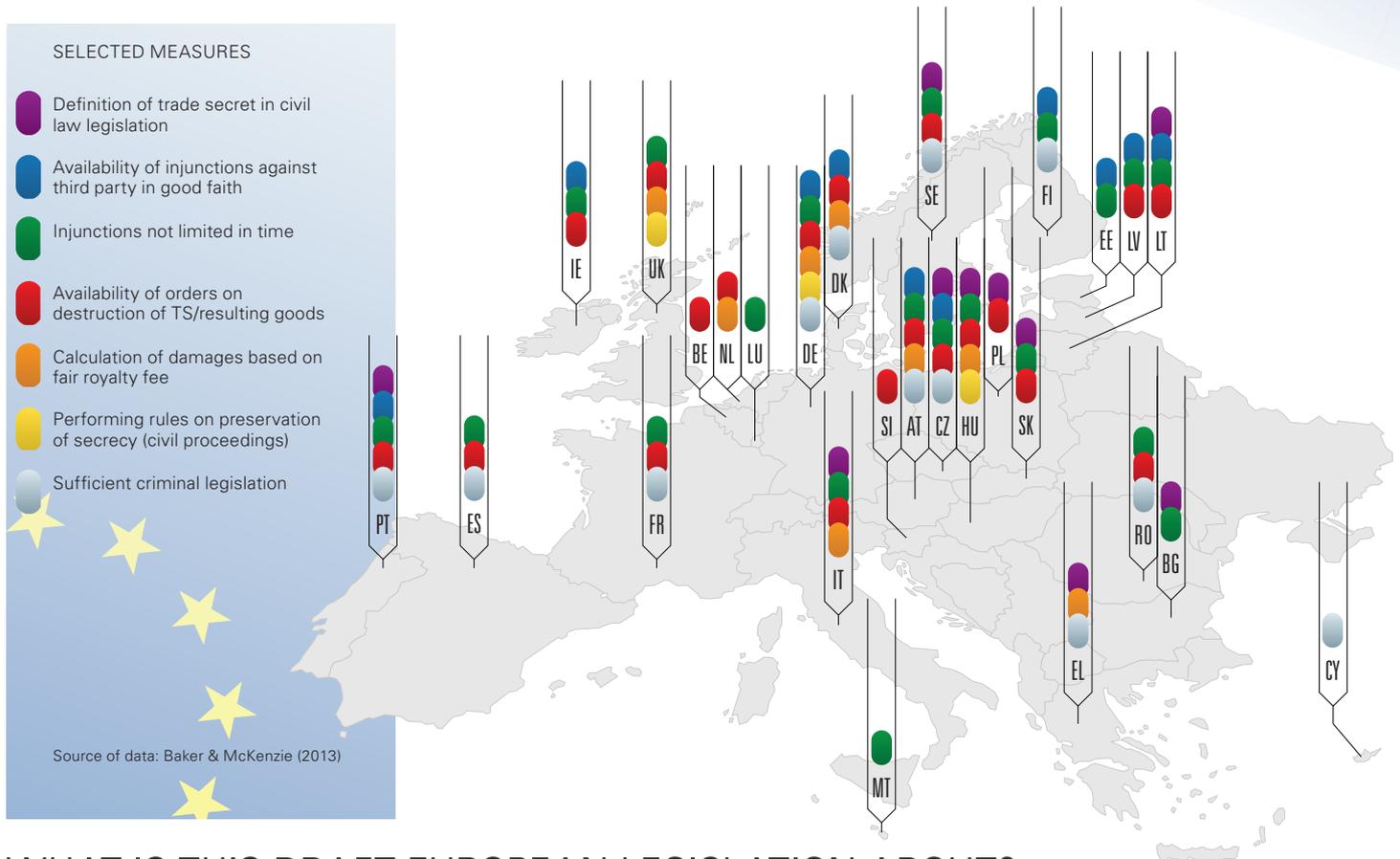
of victims of trade secret theft did not seek legal remedies before EU courts, for reasons including the lack of effective remedies or fear of losing trade secrets in court proceedings.⁵

40%

of companies do not share trade secrets because they are unable to properly remedy the situation in Europe.⁶

EU
legislation

THE FRAGMENTATION OF LEGAL PROTECTION IN EUROPE



WHAT IS THIS DRAFT EUROPEAN LEGISLATION ABOUT?

In a nutshell, it proposes to harmonise EU Member State laws by setting a common definition of what constitutes a trade secret and providing a framework for victims of misappropriation to claim reparations. This will:

- 1 Enable companies of all sizes to effectively protect themselves against dishonest practices. This will especially benefit the smaller ones with limited human and financial means to seek remedies
- 2 Discourage misappropriation attempts, especially originating in countries outside the EU, as well as efforts to place goods produced from stolen know-how on the market.
- 3 Create a secure environment conducive to innovation, where valuable know-how can be exchanged between companies. It will generate legal certainty for innovators.

THE TRADE SECRETS DIRECTIVE PROVIDES CLEAR SAFEGUARDS



It enshrines the transparency of regulatory data in the field of health / environment

This proposal guarantees that EU/ national regulatory authorities will have the same access to the regulatory data of companies in the field of health and environment e.g. the results of clinical studies or the nature of chemicals released into nature.



It ensures a mobile workforce

This proposal reaffirms that employees will be able to use the knowledge, experience and skills they acquired in another company. This know-how belongs to workers and is very different from a laptop containing your marketing plans for next year.



It protects whistleblowers, journalists and their sources

Confidential business information can be revealed by journalists or whistleblowers for protecting a general public interest. The Directive would have confirmed the disclosure of trade secrets by journalist Edouard Perrin as lawful, in the Luxleaks scandal.

1. US Chamber of Commerce: The case for enhanced protection of trade secrets in the Trans-Pacific Partnership Agreement, 2013
 2. Fontana et al. 2013
 3. Baker & McKenzie Survey 2013
 4. Global Fraud Report 2013/2014 Kroll

5. Baker & McKenzie Survey 2013
 6. Study on Trade Secrets and Confidential Business Information in the Internal Market, Baker McKenzie, April 2013
 7. Agreement on Trade Related Aspects of Intellectual Property Rights