

## PUBLIC CONSULTATION ON THE PROTECTION OF BUSINESS AND RESEARCH KNOW-HOW

Meta Informations	
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### I. Questions to General Public

I.1. In your view, of what importance are 'trade secrets/confidential business information' for (check all relevant boxes):	
Research and development	High
Exploitation of innovation, i.e. turning an invention into a marketable product	High
Innovative and competitive performance of SMEs	High
Innovative and competitive performance of large companies which operate internationally	High
Growth and jobs in the EU economy in general	Medium

I.2. How do you think 'trade secrets/confidential business information' influence the following (check all relevant boxes):	
Research in research institutions	Strong positive
Research and development in companies	Strong positive
Exploitation of innovation, i.e. turning an invention into a marketable product	Strong positive
SMEs innovative and competitive performance	Strong positive
The innovative and competitive performance of large companies which operate internationally	Strong positive
Growth and jobs in the EU in general	Weak positive
Competitiveness of the EU in the world	Weak positive
Consumer choice	Neutral
Lower prices of goods and services	Neutral
I.3. Do you consider 'trade secrets/confidential business information' an important tool for business and research bodies in the EU in order to protect their valuable information (check only one box)?	Yes, as complement to IPRs

I.4. Do you consider the legal protection against the misappropriation of 'trade secret/confidential business information' (check all relevant boxes):	
At national level	Appropriate
In a cross-border context in the EU*	Weak
In a cross-border context globally**	Weak
I.6. Cross-border context: if in question I.4 you consider the current legal protection against the misappropriation of 'trade secrets/confidential business information' when doing business across borders as weak, where do you see weaknesses (check all relevant boxes)?	Differences in the scope of protection in the EU Member States (e.g. different measures and thus level of protection may be obtained for objectively similar misappropriation facts) Cost of litigation or of getting a judgment recognised and enforced in other EU Member States Insufficient knowledge about the legal regime in other EU Member States makes it difficult to optimise protective measures (e.g. confidentiality clauses in contracts) Other (please specify)
I.6.1. Other (please specify)	Much time does usually lapse until final recognition with all formalities

I.7. What is the impact of having different/divergent national rules on the protection of trade secrets against misappropriation when doing business across borders in the EU (check all relevant boxes)?	higher business risk in the Member States with weaker protection increased expenditure in preventive measures to protect information increased costs in adapting licensing models to different/divergent national rules
I.8. There is no EU legislation specifically addressing the misappropriation of trade secrets and national rules on this issue differ. Do you think that the legal protection against the misappropriation of 'trade secrets/confidential business information ' should specifically be addressed at EU level (check only one box)?	Yes (please specify)
1.8.1. EU Action	Other (please specify)
I.8.1.1. Other (please specify)	There should be the same level of protection and enforcement remedies

**Would be EU legislation or a Commission recommendation addressing the misappropriation of trade secrets what should be its content**

Prohibition of acts of misappropriation of trade secrets/confidential business information and definition of such acts	Yes
Empower courts to order the stop of the unlawful use of the misappropriated trade secrets/confidential business information in the whole of the EU	Yes
Empower courts to order all customs authorities in the EU to stop at the EU borders imports of products manufactured in a non-EU country using misappropriated trade secrets/confidential business information	Yes
Rules on the calculation of damages including all relevant factors (lost sales, unjustified profits by the defendant, royalties, etc.)	Yes
Uniform contractual rules on non-compete and/or non-disclosure clauses between the trade secret owner and employees	Yes
Rules on criminal penalties and/or fines for individuals and organisations responsible for misappropriation of trade secrets/confidential business information	Yes
Rules ensuring that the confidentiality of the trade secrets/confidential business information is kept during court proceedings and hearings, so that the trade secret/confidential business information is not lost or further disclosed in the course of legal actions	Yes
Other (please specify)	No opinion
I.10. In your view, what would be the likely effects/impacts of EU level legislation (check all relevant boxes)?	Positive effects/impacts (please specify)
1.10.1. Positive effects/impacts (check all relevant boxes)	Better protection against the misappropriation of trade secrets/confidential business information Companies/researchers would have to spend less for company-specific protective measures Companies/researchers could better rely on effective cross-border law enforcement and costs would be lower when litigating in other EU Member States Safer business environment would create better opportunities for different players to cooperate in R&D and innovation projects ("network/collaborative innovation" as opposed to "in-house innovation")
I.11. Do you think that legislation against the misappropriation of trade secrets/confidential business information at EU level would improve the functioning of the internal market for intellectual property (check only one box)?	Yes, because (please specify)

I.11.2. Yes, because (check all relevant boxes)

greater legal certainty and easier enforcement would encourage the exchange of intellectual property across borders in the EU.  
better coordination and/or harmonisation across EU Member States would help in deterring misappropriation from non-EU countries and make intra-EU cooperation more interesting.

## II. Questions specific to 'users' of trade secrets/confidential business information

II.1. Do you hold trade secrets/confidential business information in your company/entity (check only one box)?	No opinion
II.2. Do you make an effort to protect trade secrets/confidential business information in your company/entity (check only one box)?	No opinion
II.3. Did you ever enter into technology/know-how transfer agreements?	No
II.4. Have/has important trade secrets/confidential business information been stolen from your company/entity (check only one box)?	No opinion
II.6. Did you take any legal action? If yes, was it successful in stopping the misappropriation and providing sufficient redress to make up the economic damage?	
II.7. Do you use any other form of IPR (check all relevant boxes)?	Design rights Trademarks Geographical indications

## II.8. When you do not use IPRs, what is the reason (check all relevant boxes)?

Patents	No opinion
Design rights	No opinion
Trade marks	No opinion
Copyright	No opinion
Geographical indications	No opinion

## III. Questions regarding your status as respondent

III.1. EU Member State or other country where you are located or to which you referred in your replies above.	EU-wide organisation
III.2. In what quality are you replying (check only one box)?	NGO
III.3. Business sector (check only one box):	Not applicable (e.g. private citizen)
III.5 Cross-border activities (check all relevant boxes)	None
III.6. Is your organisation registered in the Interest Representative Register? If not, you have the opportunity to register here before you submit your contribution.	No
III.7. Organisation	ECTA -European communities Trade Mark Association
III.8. Can the Commission contact you if further details on the information you submitted are required?	Yes
III.8.1. Your name, organisation and e-mail address:	ECTA- ecta@ecta.org
III.9. Do you object to publication of the personal data on the grounds that such publication would harm your legitimate interests?	

## IV. For all respondents

Any additional information you consider relevant (max. 3000 characters):