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PROPOSED EU TRADE SECRETS DIRECTIVE: SHAPING THE NEW EU LEGISLATION ON THE PROTECTION OF TRADE SECRETS

Summary. This article concentrates on the main features of the proposed Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure. The Directive, the first of its kind on a EU level, is designed to harmonize the law and its enforcement across all 28 Member States of the European Union. The current divergence of national rules means that legal protection of trade secrets within the EU is uneven and fragmented and thus insufficient.

Keyword: trade secrets, know-how, trade secrets directive, European Union, EU.

PROJEKT DYREKTYWY UNIJNEJ W SPRAWIE OCHRONY TAJEMNIC HANDLOWYCH: NOWE PRZEPISY UE O OCHRONIE TAJEMNIC HANDLOWYCH

Streszczenie. W artykule poddano analizie najważniejsze postanowienia projektu dyrektywy UE w sprawie ochrony niejawnego know-how i niejawnych informacji handlowych (tajemnic handlowych) przed ich bezprawnym pozyskiwaniem, wykorzystywaniem i ujawnianiem. Dyrektywa jest pierwszym aktem prawnym wydanym na poziomie UE zmierzającym do ujednoczenia zasad ochrony tajemnic handlowych w państwach Unii Europejskiej. Istniejące różnice w ustawodawstwach poszczególnych państw powodują, że ochrona tych tajemnic jest obecnie niejednolita, a przez to niewystarczająca.

Słowa kluczowe: tajemnice handlowe, know-how, dyrektywa w sprawie tajemnic handlowych, Unia Europejska, EU.

1. Introduction

On 28 November 2013, the European Commission submitted a draft proposal for new rules regarding the protection of trade secrets against their unlawful acquisition, use and disclosure¹. The objective of the draft Directive is to establish an adequate and comparable level of protection against misappropriation of trade secrets in the different EU Member States.

Currently there is no common approach to the protection of trade secrets at the EU level. Existing national regulations offer an uneven level of protection across the EU of trade secrets against their unlawful acquisition, use or disclosure by other persons. The differences in the legal protection of trade secrets provided for by the Member States may lead to fragmentation of the internal market in this area and weakening the overall deterrent effect of the rules². As long as the substance of legal protection of trade secrets differs among the Member States investment, particularly cross-border investment, may well be held back. Differences in the Member States legislation can also impede collaboration between nationals of Member States when that entails the development and exchange of secret know-how³.

If adopted, the trade secrets Directive will lead to positive effects, as the risk of trade secrets' misappropriation in the event of cross-border cooperation should be diminished⁴. The draft directive introduces, a series of uniform definitions, a common set of remedies for trade secret misuse and procedures to preserve the confidentiality of trade secrets in legal proceedings. Greater harmonization of trade secret laws across the EU will bring benefits to all those who rely on trade secrets to protect confidential business information

This article concentrates on the main features of the draft Directive, after first explaining the meaning of the term "trade secret" and discussing briefly the current state of trade secret protection across the EU. It will then discuss the key provisions of the draft Directive.

¹ Proposal for a Directive of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, Brussels, COM (2013) 813 final (draft Directive or trade secrets Directive), http://ec.europa.eu/internal_market/iprenforcement/docs/trade-secrets/131128_proposal_en.pdf. The draft Directive follows the European Commission's comprehensive "Study on Trade Secrets and Confidential Business Information in the Internal Market", MARKT/2011/128/D (2013) (Study on Trade Secret and Confidential Business Information), http://ec.europa.eu/internal_market/iprenforcement/docs/trade-secrets/130711_final-study_en.pdf. The draft Directive also follows "Study on Trade Secrets and Parasitic Copying (Look-alikes), MARKT/2010/20/D (2012) (Study on Trade Secrets and Parasitic Copying), http://ec.europa.eu/internal_market/iprenforcement/docs/parasitic/201201-study_en.pdf. This article discusses the draft Directive including the most recent developments introduced by compromise proposal of the Council Presidency (see the "General Approach" put forward by the General Secretariat of the European Council to the Council on 26 May 2014, Council of the European Union, 9870/14, Brussels, 19 May 2014, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209870%202014%20INIT>).

² Recital 7 of the draft Directive.

³ Hilty R. M., Knaak R., Kur A.: Comments of the Max Planck Institute for Innovation and Competition of 3 June 2014 on the Proposal of the European Commission for a Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2464971 (Comments of the Max Planck Institute), p. 2.

⁴ Comments of the Max Planck Institute, p. 2.

2. Trade secrets

In legal terminology, "trade secret" is the term used to denote any information that is confidential in order to retain a competitive advantage in business. Other terms used include: "secret know-how", "undisclosed information", "confidential information" and "proprietary technology". When defining "trade secret" terms such as: "manufacturing secrets", "classified information" are also likely to be used.

There is no uniform definition of "trade secrets" within the European Union. Each Member State of the EU has adopted different eligibility criteria for information to qualify as trade secret. Despite this lack of uniform definition, there are four factors that are common to most definitions of trade secrets, that is: i) technical or commercial information related to the business; ii) it is secret in the sense that it is not generally known or easily accessible; iii) it has economic value consisting of conferring a competitive advantage to its owner; and iv) it is subject to reasonable steps to keep it secret.⁵

Many types of confidential commercial information may be protected as trade secrets, as they result from the combination of different kinds of technical and commercial information. Trade secrets comprise: chemical formulas, mechanical structures, manufacturing processes, data compilations, customer lists, customer buying preferences and requirements, valuable business information, costs and price information, product characteristics, prototypes, distribution channels, designs, drawings, architectural plans, blueprints, *etc.*⁶

Trade secrets are not generally viewed as objects of intellectual property rights and most EU Member States' legislation as well as the General Court of the EU do not treat rights in trade secrets as intellectual property rights⁷. In fact, protection of trade secrets often appears to be much broader than the protection of patents, trademarks or copyrights⁸. For example, patent law requires that the subject matter must be novel, useful and non-obvious and patent application must disclose the invention to the public. Temporary protection is then afforded for a period of 20 years, after which the information becomes freely available to the public. Novelty and invention are not requisite for a trade secret as they are for patentability. In fact, a trade secret may be nothing more than a compilation of otherwise publicly available information⁹. There are no formal requirements or applications to file in order to obtain a

⁵ Study on Trade Secret and Confidential Business Information, p. 4-5.

⁶ The most often cited example of a trade secret is the formula of Coca-Cola drink, which is not protected by any patent.

⁷ Judgment of the General Court of 27 June 2012, Microsoft Corporation v. Commission, case T-167/08, par. 150: "the value of intellectual property rights, trade secrets or other confidential information (...)."

⁸ According to U. Bux: "In practice, trade secrets might be of an even more intangible nature than other intellectual property rights such as trademarks, copyright and patents." (Bux U.: Trade Secrets. In-depth analysis, PE 493.055, Brussels, April 2014, [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/493055/IPOL-JURI_NT\(2014\)493055_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/493055/IPOL-JURI_NT(2014)493055_EN.pdf), p. 6).

⁹ Duston T., Ross T.: Intellectual property protection for trade secrets and know-how, http://www.ipo.org/wp-content/uploads/2013/04/IP_Protection_for_Trade_Secrets_and_Know-how1076598753.pdf.

rights in trade secret. Unlike patents trade secrets have the possibility of continuing on indefinitely. A trade secret can be protected as long as the holder is successful in maintaining the secrecy of the information. There are fundamental differences in the type of protection afforded by patents and rights in trade secrets.

Trade secret laws do not grant the holder the exclusive right to exploit the secret information. It is thus possible for others to develop the information independently or to derive it by means of reverse engineering.

Evidence shows that companies, and in particular SMEs and start-ups, value them as much as patents and other forms of intellectual property rights. According to a survey carried out over a sample EU businesses, 75 per cent of respondents (out of 537) ranked trade secrets as strategically important to their company's growth, competitiveness and innovative performance and approximately 60% of them stated that they shared trade secrets regularly or occasionally with third parties¹⁰.

3. Overview of the current state of trade secrets protection in the countries of the European Union

The legal framework and practices of trade secrets protection in 28 Member States of the European Union varies significantly. In some countries protection of trade secrets is limited to a large extent¹¹. This in practice may lead to the situation whereby undertakings are unable to sue another party for misappropriation of their trade secrets in another EU country.

There are legal instruments already in place to foster uniform standards of protection of trade secrets at the international level. The international basis for the protection of trade secrets is set out in article 39 of the World Trade Organization's 1994 TRIPS Agreement¹². Article 39 of the TRIPS Agreement provides a relatively flexible framework of trade secret

¹⁰ Study on Trade Secret and Confidential Business Information, p. 12-13.

¹¹ Study on Trade Secrets and Parasitic Copying, p. 1.

¹² Agreement on Trade-Related Aspects of Intellectual Property Rights (Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization (WTO), signed in Marrakesh, Morocco on 15 April 1994 – TRIPS Agreement). One of the objectives of the TRIPS Agreement is to provide standards and principles concerning the availability, scope and use of trade related intellectual property rights as well as effective and appropriate means for their enforcement. Article 39 of TRIPS Agreement sets out minimum levels of protection for intellectual property rights of WTO Members while article 39(2) provides a definition of trade secrets, together with a range of enforcement mechanisms and remedies (Study on Trade Secret and Confidential Business Information, p. 3). Some authors argue that the EU and the Member States are obliged to protect trade secrets as intellectual property, which has its source in the wording of the TRIPS Agreements (see for example Bronckers M., McNeils N.: Is the EU Obligated to Improve the Protection of Trade Secrets? An inquiry into TRIPS, the European Convention on Human Rights and the EU Charter of Fundamental Rights, European Intellectual Property Review 2012, No 10, p. 677-680).

protection and Member States have enjoyed a certain autonomy with respect to how they should implement these provisions¹³.

All EU Member States offer some form of protection to trade secrets, however, the method of protection differs from state to state. Sweden deserves special attention as it is the only Member State with specific legislation on trade secrets (Act on the Protection of Trade Secrets of 1990). In most other countries, specific provisions can be found in different pieces of legislation. Member States such as Austria, Germany, Poland or Spain rely on unfair competition law. Some Member States, notably the UK and the Republic of Ireland, have no statutory form of protection for trade secrets and use the law of confidence to protect them. Some countries mainly rely on tort law to protect trade secrets (Netherlands, Portugal or Belgium). Contractual liability is used to protect trade secrets, in particular in relation to employees, in most Member States. Some countries provide very limited protection, such as Malta, where protection arises solely from the law of contract. Most EU Member States have criminal sanctions against trade secrets infringement¹⁴.

As there is no uniform definition of what amounts to a trade secret, nor there is a clear approach to the process of securing their value and when trade secrets are misused.¹⁵ Another consequence of the lack of harmonized system of protection of trade secrets is that actions available in case of trade secrets violations vary in each Member State. Available remedies include injunctive relief, return, seizure, withdrawal, destruction of infringing goods or materials embedding trade secrets, restraint orders, penalties and damages. Out of this list, the remedies most commonly applied in Member States Courts' practice are injunctions and damages.¹⁶ There is a lack of consistency between Member States as to the individuals against whom action can be taken. Differences between Member States exist in relation to procedural mechanisms for protecting the confidentiality of trade secrets during court proceedings.

This contrast with the position in the USA, where there is specific law on trade secrets (The US Uniform Trade Secrets Act) containing a statutory definition of trade secrets and providing a detailed description of the conduct which amounts to trade secrets misappropriation.

¹³ Study on Trade Secrets and Parasitic Copying, p. 10.

¹⁴ Study on Trade Secret and Confidential Business Information, p. 4; Study on Trade Secrets and Parasitic Copying, p. 3, 10-42.

¹⁵ Grassie G.: Trade secrets: the new EU enforcement regime, *Journal of Intellectual Property Law & Practice*, 2014, No. 8, p. 677.

¹⁶ Study on Trade Secrets and Confidential Business Information in the Internal Market, p. 6.

4. The draft Directive

4.1. Subject matter and scope of the draft Directive

The subject matter and scope of the draft Directive are defined in article 1 and article 2. As article 1 stipulates the draft Directive lays down rules on the protection against the unlawful acquisition, disclosure and use of trade secrets. Member States are allowed to apply stricter measures on condition that compliance with certain provisions of draft Directive is ensured (minimum harmonization in contrast to full harmonization)¹⁷.

Article 2 of the draft Directive adopts a definition of a “trade secret” and of some other terms, namely: “trade secret holder”, “infringer”, „infringing goods”. Proposed definition of a “trade secret” is based to a large extent on the definition of “undisclosed information” contained in article 39 of the TRIPS Agreement. The definition of a “trade secret” in the draft Directive has three elements: 1) secrecy; 2) commercial value; and 3) reasonable steps to preserve secrecy¹⁸. According to article 2(1)(a)-(c) of the draft Directive information: (i) must be secret¹⁹; (ii) must have commercial value because it is secret; and (iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret. Similarly to the TRIPS Agreement definition of a trade secret holder, the definition contained in the draft Directive incorporates the concept of lawfulness of control of the trade secret²⁰. Some uncertainty arises about when information has been “subject to reasonable steps” to keep the information secret.

There are different issues left unregulated in the draft Directive. For example, it does not address important issues arising in the context of post-contractual non-disclosure obligations imposed on former employees or the question of ownership of trade secrets in the context of cooperation agreements²¹.

The trade secret Directive does not interfere with prerogatives of the EU Member States regarding criminal law.

¹⁷ Articles 4, 5, article 6(1), article 7, the second subparagraph of article 8(1), articles 8(3), 8(4), 9(2), articles 10, 12 and article 14(3).

¹⁸ Aplin T.: A critical evaluation of the proposed EU Trade Secrets Directive, King’s College London Dickson Poon School of Law. Legal Studies Research Paper Series, paper no. 2014-25, p. 9. <file:///C:/Users/user/Downloads/SSRN-id2467946.pdf>. Recital 8 of the draft Directive states that the definition of ‘trade secret’ should be construed to cover business information, technological information and know-how.

¹⁹ Information must be secret in the sense “that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question”; this is notably not an absolute secrecy requirement, which is one of the initial qualifications for a valid registered patent (Grassie G.: Trade secrets..., p. 679).

²⁰ The trade secret holder can be thus the original proprietor, a licensee, including a non-exclusive licensee.

²¹ Comments of the Max Planck Institute, p. 3.

4.2. Scope of protection

Article 3(1) of the draft Directive requires Member States to ensure civil law protection against unlawful acquisition, use and disclosure of trade secrets²². Article 3(2) describes unlawful acquisition, while article 3(3) explains the meaning of unlawful use and disclosure²³. According to article 3(2) acquisition of a trade secret without the consent of the trade secret holder will be considered unlawful, whenever it is carried out by: (i) unauthorized access to, copying or appropriation of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced; (ii) any other conduct which, under the circumstances, is considered contrary to honest commercial practices. References to “intention” and “gross negligence” in relation to unauthorized acquisition, use and disclosure, were deleted from articles 3(2) and 3(3) of the draft Directive as provided for in the compromise draft of the Council Presidency. However, a knowledge criterion is required in the case of passive receivers of information (third parties) for their conduct to be unlawful²⁴.

Article 4(1) of the draft Directive provides a list of lawful ways in which trade secrets may be acquired. The acquisition of trade secrets shall be considered lawful when obtained by, *inter alia*, the following means: (i) independent discovery or creation; (ii) observation, study, disassembly or test of a product or object that has been made available to the public or that it is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret (reverse engineering)²⁵. Article 4(2)(a) of the draft Directive provides for a general exception for making legitimate use of the right to freedom of expression and information.

²² According to the Explanatory Memorandum to the draft Directive the key element for those acts to be unlawful is the absence of consent of the trade secret holder.

²³ Article 3(3) of the draft Directive stipulates that the use or disclosure of a trade secret is unlawful whenever carried out, without the consent of the trade secret holder: (i) by a person who has either acquired the trade secret unlawfully; (ii) is in breach of a confidentiality agreement or any other duty to not disclose the trade secret; or (iii) is in breach of a contractual or any other duty to limit the use of the trade secret.

²⁴ According to article 3(4) of the draft Directive: “The acquisition, use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of acquisition, use or disclosure, knew or should, under the circumstances, have known that the trade secret was obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of paragraph 3”; this provision might be helpful in the situation where for example an ex-employee takes a trade secret with him and then uses it within a new business or provides it to his new employer company (Grassie G.: Trade secrets..., p. 680).

²⁵ The admissibility of acquisition of secret information through reverse engineering also means that any subsequent use of the information is equally permitted (Comments of the Max Planck Institute, p. 10).

4.3. Enforcement²⁶

Article 5 of the draft Directive lays down a general obligation to establish a legal framework containing measures, procedures and remedies necessary to ensure the availability of civil redress against unlawful acquisition, use and disclosure of trade secrets. According to article 6 of the draft Directive these measures, procedures and remedies must be applied by the courts in a manner that: (i) is proportionate; (ii) avoids the creation of barriers to legitimate trade in the internal market; (iii) provides for safeguards against their abuse.

As article 7 of the draft Directive stipulates, the ability of trade secret holders to sue for unlawful acquisition, use or disclosure of their trade secrets will be limited to not more than six years. It will be a matter for Member States to “determine when the limitation period begins to run, the duration of the limitation period and the circumstances under which the limitation period is interrupted or suspended”. This approach is in accordance with EU directives harmonizing intellectual property rights, which remain silent on the question of limitation periods, and also provides a reasonable outer limit in which to bring proceedings²⁷.

Article 8 of the draft Directive requires that Member States provide judicial authorities with mechanisms to preserve the confidentiality of trade secrets disclosed in court for the purpose of litigation. The possible measures include: (i) restricting access to any document containing trade secrets or alleged trade secrets; (ii) restricting access to hearings, when trade secrets or alleged trade secrets may be disclosed, and their corresponding records or transcript; (iii) making available to third parties a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed. The wording of article 8 is to ensure the balance between the protection of trade secrets and the right of the parties to a fair trial.

Article 9 of the draft Directive provides for provisional and precautionary measures that the competent national authorities are entitled to grant against the alleged infringer. The draft Directive mentions explicitly: (i) the cessation or the prohibition of the use or disclosure of the trade secret on an provisional basis; (ii) the prohibition to produce, offer, place on the market or use infringing goods, or import, export or store infringing goods for those purposes; (iii) the seizure or delivery up of the suspected infringing goods, including imported goods, so as to prevent their entry into or circulation within the market. The draft Directive also establishes safeguards to ensure the equity and proportionality of those provisional and precautionary measures (article 10).

²⁶ The measures adopted by the Member States to protect trade secrets do not affect the application of any other relevant law in other areas including intellectual property rights, privacy, access to documents, and the law of contract. However, where the scope of application of Directive 2004/48/EC (Directive of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights - OJ L157, 30.4.2004, p. 45 – Enforcement Directive) and the scope of the draft Directive overlap, the latter takes precedence as *lex specialis* (recital 28 of the draft directive). In fact, the relationship between the draft Directive and the Enforcement Directive is much more problematic and may raise serious doubts in the future.

²⁷ Aplin T.: A critical..., p. 36.

It is to be regretted that the draft Directive does not contain provisions to facilitate gathering of evidence of misuse of trade secrets in court proceedings. For example, it is not foreseen for trade secret holders to oblige third parties to provide information and/or documents.

The draft Directive remains silent on the issues related to criminal offences and penalties for trade secret infringement²⁸.

4.4. Injunctions and corrective measures

Articles 11 - 14 of the draft Directive provides for measures that may be ordered with the decision on the merits of the case. Article 11(1) obliges Member States, to provide for the following sanctions to be imposed by the competent judicial authorities if an infringement has been found: (i) the cessation or the prohibition of the use or disclosure of the trade secret; (ii) the prohibition to produce, offer, place on the market or use of infringing goods, or import, export or store of infringing goods for those purposes; (iii) the adoption of the appropriate corrective measures with regard to the infringing goods²⁹.

Article 11(2) of the draft Directive provides that the corrective measures that judicial authorities may take must include, *inter alia*: (i) recall of infringing goods from the market; (ii) depriving infringing goods of their infringing quality; (iii) destruction of the infringing goods or, where appropriate, their withdrawal from the market.

According to article 11(3) of the draft Directive, which is no longer mandatory, Member States may provide when ordering the withdrawal of the infringing goods from the market, the judicial authorities may order, at the request of the trade secret holder, that the goods are delivered up to the holder or to charitable organizations.

4.5. Damages

Article 13 of the draft Directive which deals with the award of damages, sets forth that Member States must ensure that judicial authorities can order the infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, use or disclosure of a trade secret, to pay the trade secret holder damages appropriate to the actual prejudice

²⁸ One of the key divergences in legal protection of trade secrets identified by the European Commission related to criminal offences and penalties for trade secret infringement (Commission Staff Working Document Impact Assessment SWD (2013) 471 Final, issued on 28.11.13, Annex 14, file:///C:/Users/user/Downloads/1_EN_impact_assessment_part1_v6%20(1).pdf).

²⁹ It is worth noting that the prohibition to produce, offer, and place on the market or use of infringing goods set forth in article 11(1)(b) is redundant. These actions are regarded as modes of use of a trade secret pursuant to Article 3(5) and accordingly fall under the scope of Article 11(1)(a) (Max Planck Institute Comments, p. 16).

suffered as a result of the infringement³⁰. In accordance with their national law and practice, Member States may restrict the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer when they act without intent.

Article 13(2) of the draft Directive mentions various methods of calculation of damages. It calls for the taking into consideration of all the relevant factors, including the lost profits, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the trade secret holder. The possibility of calculating the damages on the basis of hypothetical royalties is also made available, in line of what is foreseen in the case of infringements of intellectual property rights. Punitive damages are not provided for under the draft Directive.

4.6. Publication of judicial decisions

Article 14 of the draft Directive empowers the competent judicial authorities to adopt publicity measures at the request of the plaintiff, including the publication of the decision on the merits of the case – provided that the trade secret is not disclosed and after considering the proportionality of the measure.

5. Conclusions

The step towards harmonization of trade secret law in the European Union is a welcome one. Trade secrets together with patents, designs, copyright and other intellectual property rights have an important role to play in promoting innovation. The need for certain and consistent protection of trade secrets cannot be underestimated.

The divergence in protection of trade secrets in the EU negatively affects innovation, undermines competitiveness and increases the cost of protecting trade secrets in Europe. The need for urgent harmonization is clearly demonstrated by the surveys showing that 40% of EU companies would refrain from sharing trade secrets with other parties because of fear of losing the confidentiality of the information through misuse or release without their authorization. Enforcement of rights in trade secrets is therefore of crucial commercial importance.

The draft Directive contains a number of helpful provisions, introducing satisfactory and comparable level of protection across EU in case of unlawful acquisition, use or disclosure of

³⁰ The provisions on damages fall largely in line with those set out in the Enforcement Directive (Grassie G.: Trade secrets..., p. 680).

a trade secret. The draft Directive should give greater clarity to and recognize the importance of the valuable role that trade secrets play. Even though some further improvements to the draft Directive would be desirable its implementation by the Member States will lead to positive effects.

The European Commission had indicated that the draft directive could, if approved by the Parliament and Council, be in force by the end of 2014. Member States will then have a further two years to transpose it into national law.

Bibliography

1. Bronckers M., McNeils N.: Is the EU Obligated to Improve the Protection of Trade Secrets? An inquiry into TRIPS, the European Convention on Human Rights and the EU Charter of Fundamental Rights, *European Intellectual Property Review* 2012, No. 10.
2. Grassie G.: Trade secrets: the new EU enforcement regime. *Journal of Intellectual Property Law & Practice*, 2014, No. 8.
3. Aplin T.: A critical evaluation of the proposed EU Trade Secrets Directive, King's College London Dickson Poon School of Law. Legal Studies Research Paper Series, paper no. 2014-25, p. 9, file:///C:/Users/user/Downloads/SSRN-id2467946.pdf.
4. Bux U.: Trade Secrets. In-depth analysis, PE 493.055, Brussels, April 2014, [http://www.europarl.europa.eu/RegData/etudes/note/join/2014/493055/IPOL-JURI_NT\(2014\)493055_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2014/493055/IPOL-JURI_NT(2014)493055_EN.pdf).
5. Duston T., Ross T.: Intellectual property protection for trade secrets and know-how, http://www.ipo.org/wp-content/uploads/2013/04/IP_Protection_for_Trade_Secrets_and_Know-how1076598753.pdf.
6. Hilty R. M., Knaak R., Kur A.: Comments of the Max Planck Institute for Innovation and Competition of 3 June 2014 on the Proposal of the European Commission for a Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2464971.

Omówienie

Autor artykułu omawia najważniejsze postanowienie projektu dyrektywy Unii Europejskiej w sprawie ochrony niejawnego know-how i niejawnych informacji handlowych

(tajemnic handlowych) przed ich bezprawnym pozyskiwaniem, wykorzystywaniem i ujawnianiem. Dyrektywa ma na celu zniwelowanie różnic istniejących w ustawodawstwach poszczególnych państw członkowskich UE w zakresie ochrony tajemnic handlowych. W artykule wyjaśniono w niezbędnym zakresie znaczenie pojęcia „tajemnice handlowe” oraz wskazano, w jaki sposób tajemnice te są w chwili obecnej chronione w państwach Unii Europejskiej.