

WILL THE NEW TRADE SECRETS DIRECTIVE CREATE A UNIFIED APPROACH ACROSS THE EU

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Legal Briefings

The European Parliament and EU Council have agreed the terms of a Trade Secrets Directive that aims to harmonise the definition and protection of trade secrets and undisclosed know-how across Europe. Once approved and adopted, the Directive could take effect early this year, with Member States then having a two year window in which to implement its provisions.

The Directive aims to provide a clear and uniform level of protection across the EU to counter the growing problem of trade secret theft and to stimulate cross-border collaboration and innovation. The Directive creates a common definition of trade secret and defines what constitutes lawful and unlawful acquisition, use and disclosure of trade secrets.

Companies operating across the EU will welcome a more unified approach which should facilitate cross-border research and development, and provide the mechanisms for an effective response and deterrent against the unlawful disclosure of trade secrets. However, the precise scope of some of the provisions is not yet clear and will inevitably require clarification by the Court of Justice of the European Union (ECJ) in due course. There are also areas where the Directive appears to conflict with the current UK position on trade secrets, as discussed in more detail below.

From the UK's point of view, there is a shift in emphasis from the common law approach of assessing the confidential quality of the information, to an assessment of what steps were taken to keep it secret: the Directive requires the trade secret holder to show they have taken reasonable steps to protect the information and keep it confidential in order for the information to amount to a trade secret. The Directive also protects the confidentiality of trade secrets revealed in the course of legal proceedings or in any subsequent judgment.

The Directive will provide a minimum level of protection for trade secrets across Member States. Whilst additional protections can be included by individual Member States, there are some provisions in the Directive (such as what is not a trade secret) which cannot be deviated from. The introduction of a definition of a trade secret raises the question whether the UK common law interpretation of confidential information will be narrowed to this definition.

The Directive could be approved and adopted early this year, potentially around March 2016, with Member States then having a two year window in which to implement its provisions.

Please see our [full briefing](#) for more information.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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