

# Position Paper

## UEAPME<sup>1</sup> position on the protection of Business and Research Know-How

### 1. Introduction

UEAPME welcomes the consultation on the protection of Business and Research Know-How. The protection of trade secrets / confidential business information is indeed crucial when doing business, no matter if operating in the national, European or international market.

The most relevant problems that should be addressed are insufficient knowledge and a significant lack of awareness – specifically, insufficient knowledge among SMEs about the differences in the rules for the protection of intellectual property rights and the protection of business secrets in various EU Member States, insufficient awareness of the risks arising from the improper protection of business secrets and insufficient awareness of the methods to protect business secrets. For instance, in order to protect information, a prerequisite must be fulfilled: the operator must take all the necessary measures to keep the confidentiality of the information. This means that even trade secrets / confidential business information of key importance to the company will not be covered by the protection if measures preventing its disclosure are not taken. Operators often learn about this in the court, when it is too late.

In addition, there is a lack of generally available public advice and system support for small enterprises during the vindication of claims due to misappropriation of the business secret or theft of intellectual property rights.

### 2. Opinion on the initiative

UEAPME welcomes this initiative and favours EU action in general, but will also raise a few concerns.

In general, the importance of trade secrets / confidential business information in the areas of research and development, exploitation of innovation, innovative and competitive performance of SMEs, growth and jobs in the EU economy is considered as high from the point of view of SMEs.

We assume that the influence on trade secrets / confidential business information will be very positive on the research and development in companies and on the exploitation of innovation. We assume the influence will still be positive but less strong on SMEs' innovative and competitive performance, and the competitiveness of the EU in the world. We believe that there will be no influence on consumer choice and lower prices of goods.

We consider trade secrets / confidential business information both as complement and alternative for IPRs.

The different national rules on the protection of trade secrets / business know-how against misappropriation when doing business across borders within the EU lead to higher business risk in Member States with weaker protection. It further leads to increased expenditure in preventive measures to protect information and to a reduction in cross-border business activity as trust in legal protection in other Member States is affected.

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<sup>1</sup> UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

UEAPME is of the opinion that an EU action could improve the legal protection against misappropriation of trade secrets/confidential business information. Such action should definitely include a European body to provide easy, reliable and accurate information on the differences in national legislation, e.g. via a dedicated website easily understandable and available in all the official EU languages.

On the content, such an EU action should include the prohibition of acts of misappropriation of trade secrets / confidential business information. Moreover, it should empower courts to order the stop of the unlawful use of the misappropriated trade secrets / confidential business information in the whole of the EU and 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. It should also include rules on the calculation of damages including all relevant factors (lost sales, unjustified profits by the defendant, royalties, etc.), rules on criminal penalties and/or fines for individuals and organisations responsible for misappropriation of trade secrets / confidential business information and rules on ensuring that their confidentiality is kept during court proceedings and hearings, so that such information is not lost or further disclosed in the course of legal actions.

It should **not** include uniform contractual rules on non-compete and/or non-disclosure clauses between the trade secret owner and employees. This should continue to be regulated at national level.

UEAPME assumes that an EU action tailored to the needs of businesses, in particular SMEs, could provide better protection against the misappropriation of trade secrets/confidential business information. Companies could have to spend less for company-specific protective measure, they could better rely on effective cross-border law enforcement and they could reduce costs when litigating in other EU Member States.

However, as the protection of trade secrets / business know-how is such a complex issue, any EU action must be prepared very carefully not to endanger the existing balance between labour, civil and criminal law at national level.

### 3. Conclusion

The protection of trade secrets / confidential business information at EU level is very delicate as it would be touching the national labour, civil and criminal law. Such an initiative must be taken in a way that ensures that the existing balance between those areas of law at national level is well maintained.

Moreover, raising awareness of the risk relating to the non-protection of trade secrets / confidential business information at national, European and international level for companies – but especially for SMEs – is crucial for the acceptance of an EU action by the companies.

For any further legislative steps at EU level, we urge policy makers to keep the Think Small First principle in mind from the drafting phase of the procedure until its implementation.

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