



## THE PROTECTION OF TRADE SECRETS AND MANAGERS

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### Position by CEC European Managers - May 2015

To ensure economic growth and the competitiveness of European companies, innovation is vital. Through innovation, companies can launch new products, improve the efficiency and sustainability of productive processes, increasing their market share and contributing to the overall technological advancement of our societies. Because of the proportionally higher share of conceptual work they put in their professional activities, managers are more directly involved in all processes that create innovation within companies. But in order for innovation to become a valid asset for them, a reliable system to protect the results of "innovating" must be put in place, based on the balance between the safeguard of property rights (including those concerning "immaterial" goods like patents and trademarks) and the respect of all those individual and social rights whose application might contrast with them (from the right to freedom of information to environmental protection).

We take the opportunity of the current debate on the legislative proposal being discussed at the European Parliament for a directive on the protection of trade secrets to present some hints for reflection on the issue, pointing out what are in our opinion the most significant aspects any legislation in this field should take into account. In fact, if on the one hand ensuring common standards for the protection of trade secrets among European countries is vital to support companies in the global competition, on the other it is necessary to prevent that:

- a) the appeal to the protection of trade secrets could be used to impede their disclosure for non-strictly commercial reasons, such as for example in the case of revealing "misconducts or illegal activities" or in application of the right to freedom of expression. The freedom for journalists and "whistleblowers" to perform their professional and social duties should always be guaranteed and protected from any form of interference originating from a partial interpretation of legislation.
- b) professional mobility of workers and (managers more directly) is hindered as a consequence of legislation on the protection of trade secrets. It might be the case, for instance, that employees (and even more so managers) might prefer not to move to another employer active in the same sector if they knew that risks of being subject to a proceeding for allegedly using trade secrets learnt during the previous employment become sensibly higher. Legislation should clearly foresee special provisions that protect any worker who decides to use knowledge and skills acquired during his or her previous working experience in a new job from the risk that this behavior might be labelled as an unlawful disclosure of trade secrets. This is

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necessary not only for the benefit of all workers who might see their position endangered, but also in order to safeguard and foster the circulation of ideas, the creation of knowledge and innovation, which are at the basis of scientific progress and economic sustainability. Europe needs to win the global battle of innovation and R&D, and hindering the diffusion of those ideas that are at the basis of it can be as counterproductive as putting in place a weak system of property rights protection.

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