

25 March 2015

## **Trade Secrets Directive: MEPs of the JURI Committee called upon to protect transparency, health and the environment**

Thursday 26 March is the deadline for member of the JURI Committee to table amendments to the Commission's Proposal for a Trade Secrets Directive. The Commission's proposal goes far beyond its stated objective of protecting the competitiveness of European businesses by allowing them to share innovative trade secrets in a secure legal framework. Its vague definitions (Articles 2 and 3) and strict exceptions (Article 4), will allow businesses to withhold important information on health and the environment from the public, and sue whistleblowers, journalists and public authorities who acquire and disclose information in the public interest.

We understand that businesses need a secure legal framework within which to collaborate. But the far-reaching sanctions in this directive should not be used against public authorities, journalists, independent scientists and whistleblowers that acquire and disclose environmental information in the public interest. Adequate protection of business interests already exists in these contexts and the extension of further protection undermines citizens' rights to information and jeopardises effective regulation in the health and environment sectors.

This runs contrary to the EU's international obligations under the Aarhus Convention, transposed into EU law by Regulation 1367/2006 and Directive 2003/4, which obliges the EU and its Member States to guarantee the rights of access to information in environmental matters "in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being".

The amendments of Rapporteur Constance Le Grip do not go far enough to protect citizens' and public authorities' rights to environmental and health information. To this end we call on MEPs in the JURI Committee to table amendments which:

- 1. Include a reference to the Aarhus Convention into the directive, to make it clear beyond doubt that the legislature intended the transposition and implementation of the directive to comply with international law.**
- 2. Exclude information the acquisition and disclosure of which is required by EU or national law or in the exercise of the mandate of public authorities from the scope of the directive (Article 1).** The objective of the Directive is to support the collaboration of businesses, not to prevent information from being disclosed to or by public authorities as required by EU or national law or the exercise of their mandate.
- 3. Exclude information on emissions into the environment from the definition of "trade secrets" (Article 2).** The Aarhus Convention obliges public authorities to disclose information on emissions into the environment to the public even when the disclosure harms

the legitimate economic interests of a business. This obligation should be reflected in the directive.

**4. Require that in order to be deemed unlawful, the acquisition, disclosure or use of a trade secret must be carried out with the aim of acquiring an economical gain or of causing economic detriment to the person lawfully controlling it (Article 3).** The directive is intended to combat unfair competition and should not cover the acquisition and disclosure of information in the public interest. Whistleblowers already receive inadequate protection when they come forward with information in the public interest. Allowing businesses to use the sanctions and procedures in this directive is a further deterrent.

**5. Make an exception for information which is acquired, used and disclosed for the purpose of protecting the public interest, including the protection of human health, animal welfare and the environment.** The Aarhus Convention obliges the EU and its Member States to develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental choices. In addition, whistleblowers, journalists and independent scientists need to be adequately protected against the sanctions contained in this directive.

**6. Make exceptions for information which is acquired, used and disclosed by public authorities pursuant to their obligations under the Aarhus Convention and access to documents legislation (Article 4).** The Aarhus Convention and access to documents legislation already contain provisions which protect business interests: confidential commercial information can only be disclosed if it does not undermine the protection of these interests and if there is no overriding public interest. This assessment must continue to be made by our public authorities. Industry should not be allowed to use the judicial relief provided in this directive against public authorities for disclosing information unduly labelled a "business secret".