

POLLINIS

WHY VOTE NO TO THE TRADE SECRETS DIRECTIVE

Dear MEPs,

We urge you to reject the 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.*

During the vote that is to take place tomorrow, Thursday 14 April, on the compromise text resulting from the draft Directive, we ask that you adopt Amendment 3, proposed by Julia Reda, Pascal Durand, Philippe Lamberts and others, in order to reject the Commission's proposal in its entirety.

Some of the main reasons why you should reject the Commission's proposal:

- According to the very large definition of a trade secret mentioned in Article 2 of the proposal, **the secret nature of the information proves its commercial value**. This means that all information within a company could be considered a priori as a trade secret (art. 2: “a trade secret has commercial value because it is secret”).
- **The right to seek disclosure** of commercial information from public authorities and the public is mentioned in the main legal text of the draft Directive **as an exception(!)** (art. 5).
- large part of the text is devoted to **litigation procedures** (Chapter 3 of the text). Any attempt to publish “commercial” information without the consent of the producer may be subject to legal proceedings and the imposition of significant damages.
- The raw data and the results of industrial research are necessarily associated with **intellectual property**.

Some of the key implications of the Directive:

- This Directive aims to **legalise current practices and the right of economic actors to retain commercial information** when there is a public interest in disclosing it.
- This Directive further **strengthens the primacy of the commercial value of the information**; the expansion of the scope of the concept of a trade secret will consolidate the opacity of the system of evaluation of food security. **The concept of a trade secret** will be broadened to include not only the data and information on the composition of products or the method of manufacture (Directive 2001/18 / EC on data privacy), but also **the raw data of regulatory studies** - required to conduct independent counter-expertise studies - and **the results of these studies on the long-term effects of the consumption** of the products studied. The access to this kind of data is already protected under art. 59 of Regulation EC No 1107/2009; it will worsen or may even become impossible under this new legal framework.
- **EFSA's regulatory powers will be further reduced**. In principle, the scientific review of EFSA's evaluations is possible with full access to regulatory studies. The agency will no longer be able to contest the fact that the data of regulatory studies remain often confidential.

- **The Directive will also reverse the hierarchy of norms within the EU** by giving a lead to the concept of a trade secret at the expense of the fundamental law on information access. The extension of the definition of trade secret disregards the precautionary principle and goes against Regulation (EC) No 1107/2009 on the regulation of pesticides and Directive No 2003/35/2C on public participation, which ensures the right of citizens to information on environmental issues.
- **It will be even harder for independent scientists, citizens-consumers, civil society, and journalists to legally challenge** the non-disclosure or the partial disclosure of information on a product prior to it being released onto the market (problem of bad science), and to exert pressure on EFSA to make regulatory toxicology studies systematically available.
- **It is up to the above-mentioned stakeholders to prove that the request for disclosure of information is not abusive.** It will require significant resources becoming increasingly difficult to mobilise (financial resources, legal resources, mobilisation capacity etc.). **Stakeholders who would like to challenge** any decision of non-disclosure or partial disclosure by relying on the related binding instruments (European Charter of Fundamental Rights, Convention of the Council of Europe on access to official documents) will have to **conduct asymmetric struggles with the relevant economic actors** given the reinforcement measures and remedies provided under the Directive.

Whereas

- We witness an increased internationalisation of trade and the **strengthening of the oligopolistic structure of food markets** at the international level,
- The Directive will **endorse the systematic non-publication of toxicology studies**, since EFSA cannot afford to order opposing studies to be carried out on a product,
- The Directive will strongly **weaken the possibility of concerned stakeholders to prove the food safety risks.**

It is urgent to act and vote against this Directive.

ABOUT US

POLLINIS, a nonprofit organization, campaigns for sustainable farming in Europe. It supports the conservation of pollinators and fights against the systematic use of pesticides. POLLINIS also provides both public and European policymakers with reports and information to support laws and policies that promote alternative agricultural practices.

Established in 2012, POLLINIS speaks for concerned consumers and taxpayers who are indirectly financing massive farming subsidies. The organization currently has over a million followers across Europe and is supported exclusively by donations from about 17,000 private individuals, guaranteeing its absolute independence and freedom of action.

POLLINIS, registered in the Transparency Register of the European Commission, is part of the European Parliament's intergroup "Climate Change, Biodiversity and Sustainable Development" and also participates in the Sustainable Food Systems Group.

More info on www.pollinis.org