



Underestimating the Data Act's impact on trade secrets' protection will undermine European industrial competitiveness

Brussels, 17 January 2023

The window of opportunity for co-legislators to place Europe on the right track to compete and lead in the data economy may not be open for long.

BusinessEurope and Orgalim - Europe's Technology Industries, are among the largest industry associations representing a vast number of companies across Europe. We share the objective to support innovation and competitiveness of European businesses, including Small and Medium-Sized Enterprises (SMEs).

As we are nearing the votes on the Data Act in the European Parliament, and specifically in the Committee on Legal Affairs exclusively responsible for the trade secrets provisions in Chapter II and III of the text, **we highlight that some amendments do not address sufficiently the challenges** the Data Act proposal poses to the trade secrets of Europe's industrial base and its future innovation capacity in both products and services.

Despite the positive intentions to strengthen the protection of trade secrets via non-disclosure agreements or other technical measures, **the very foundation of this legislative approach is weak:**

- ***Is there evidence?*** The Data Act's chosen approach to regulate trade secrets protection and data sharing is not sufficiently evidence-based. A [report](#) on the legal protection of trade secrets in the context of the data economy was published by the Commission six months after the proposal was sent to the co-legislators. We strongly warn against neglecting its conclusion, which reads: "... legislative clarification **risks intervening too soon, before markets in the data economy have taken shape**. Therefore, it is recommended that the EU Commission consider utilising interpretative soft law mechanisms on the applicability of trade secrets protection in the data economy, particularly as regards the criteria for protection as a trade secret."¹
- **"There is no going back."** Adding an obligation to share data protected by trade secrets and only evaluating what the impact of this provision is two years after the date of application is wrong. What if the evaluation shows that there was a negative impact on EU businesses? How will Europe catch up the lost years? The Data Act is not a regulatory sandbox, all necessary impact assessments should be done before the legislative intervention not after.

Recognising misconceptions of proposals shows responsibility towards Europe and the common goal to create a European single market for data. Actively working to correct errors in the course of the legislative process is a sign of strong and accountable policymaking.

The industry has put forward constructive proposals to avoid lowering the protection granted to trade secrets, in line with the Trade Secrets Directive 2016/943. We strongly recommend taking those on board.

Businesses in the EU are working hard to meet the challenge posed by the multiple crises. Regulators must tread carefully to not cause additional unnecessary challenges.

¹[Study on the legal protection of trade secrets in the context of the data economy](#), July 2022, p. 92.