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Statement

on the occasion of the European Greens/EFA press briefing on 7 April 2016 concerning the vote on the Trade Secrets' Directive in the European Parliament's plenary session in April 2016

Ladies and Gentlemen,

Two months ago, the Legal Affairs Committee of the European Parliament endorsed the results of the informal trialogue procedure on the draft proposal of a EU directive on trade secrets. This proposal will form the subject of plenary voting at the European Parliament next week. I'm glad to have the opportunity – regrettably not face-to-face – to share with you the perspective of the German workers and trade unions on this issue.

Basically, there is no general objection to a European regulation on the issue of trade secrets as such. It is reasonable to state minimum standards to protect economically valuable data from industrial espionage. However, of no less importance is providing the civilian population with transparent and unrestricted access to information about corporate malpractice, misconduct and all kinds of wrongdoing - recent scandals in the German car industry are just one of many relevant examples. A regulation which reconciles these two objectives could contribute to fair European trade and competition and to freedom of information at the same time – and would represent added value to companies and their workers as well as civil society.

Unfortunately, the proposal of the EU directive on trade secrets does not harmonise these contrary interests, even though some improvements were achieved during the trialogue negotiations. Due to the very broad definition of a "trade secret" based on subjective criteria, such as "not generally known", "subject of reasonable steps to keep it secret" and "commercial value (because it is secret)", it is still up to companies to decide which information they declare as a trade secret and keep undisclosed. This does not contribute to legal certainty but bears serious risk to consumers' and workers' interests, to the environment and to human rights. The protection of whistleblowers – the majority of them are workers – will be insufficient if any information, including information regarding misconduct, can first be declared a trade secret. It is also disappointing that skills and expertise gained in the context of employment relationships can potentially be declared trade secrets.

Let me give you just one example of how crucial these shortcomings are from the German point of view. Germany has no general legislation on the trade secrets issue and no statutory legal definition of trade secrets. But there is a clear jurisdictional interpretation, based on the objective idea that business information can only be declared a trade secret if the owner has a legitimate (in the meaning of rightful or lawful) interest to keep it undisclosed – compared to this, the directive falls short. In the course of the future implementation of the European definition into German law, a statutory regulation could go without the objective benchmark of the legitimate interest – and previous interpretation of the law would be overruled. As a result, the owner of the manipulated vehicles' software could, in accordance with the European definition, declare it a trade secret. All the legal risks – first of all the burden of proof for the public interest – would be borne by those who disclose the information. I cannot imagine that anybody really desires this outcome.



Annelie Buntenbach