

# **Shaping the EU Legal Protection for Trade Secrets: A Comparison with Trade Secrets Law in the United States**

*Research project*

Investigator:

Anthony Bochon

Abstract:

Trade secrets are usually treated with other intellectual property rights because the object of the property right protection may be the result of an intellectual activity. However, trade secrets do not belong to any of the currently existing intellectual property rights. Indeed, copyright law does not protect ideas, while patent law delimits the legal monopoly granted on the invention disclosed. Trade secrets exist because either no intellectual property rights apply or the scope of protection is not sufficiently satisfactory. Trade secrets, in the grey area of intellectual property law, are at the interface of different legal mechanisms which could be used to protect the object of the secret.

The protection of trade secrets is currently discussed at the European Union level, since no common legal framework allows individual or companies to enjoy the same level of trade secret protection across the different EU member states. Although several EU law instruments already provide protection for trade secrets, mainly in the form of procedures before the EU or Member States institutions, trade secrets have an obscure status, despite their economic importance.

The recent case law of the Court of Justice of the European Union in T-462/12, *Pilkington Group Ltd v. the European Commission*, shows that there is poor recognition of the need to protect trade secrets in the EU.

In the United States, an informal source of law, the *Uniform Trade Secrets Act*, played a vital role in harmonizing the legal protection of trade secrets across the different U.S. states. Today, trade secrets are protected more effectively in the United States than in the European Union. This gap between the two could heavily affect transatlantic trade if not properly addressed. This research project will therefore endorse the viewpoint that U.S. trade secrets law could be inspirational for the EU policy makers and ensure that EU law gives adequate recognition to the protection of trade secrets.

This research will firstly explore the legal protection given to the unauthorized disclosure of trade secrets, both through civil liability claims and criminal law proceedings in representative EU member states (United Kingdom, France and Germany) and in the U.S. This research project will also focus on measures which could be specifically taken to prevent the disclosure of trade secrets. In the light of the U.S. experience, contract law, along with competition law and intellectual property law, could provide some solutions to enhance the protection of trade secrets in Europe.