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### Highlights of Proposed European Commission Directive for Trade Secrets Protection

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On November 28, 2013, the European Commission announced a proposal for a Directive on trade secrets.<sup>2</sup> If passed by the European Parliament, the Directive will increase the trade secrets protections afforded to companies with operations in the EU and may greatly enhance cross-border certainty and uniformity across Europe.

At this stage in the legislative process, the Directive remains merely a proposal. However, several aspects of the Directive, if adopted, would substantially alter the existing legal landscape and create a more harmonized trade secret regime throughout the EU.

Three features of the Directive are particularly noteworthy.

First, the Directive provides a common definition of “trade secrets” and uniform rules about the acquisition, use, and disclosure of trade secrets. For example, in language that is similar to the definition of “trade secrets” in the Uniform Trade Secrets Act (which the vast majority of U.S. states have adopted), the proposed Directive defines a trade secret as “information which meets all the following requirements”:

- “is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question”;
- “has commercial value because it is a secret”; and
- “has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.”

The proposed Directive also provides that acquisition of a trade secret is unlawful “whenever carried out intentionally or with gross negligence by”:

- unauthorized access to or copy of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;
- theft;

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<sup>1</sup> Seyfarth Shaw attorneys Razia Begnum (London) and Andrew J. Masak (Atlanta) assisted with the preparation of these materials. For updates on the Directive as it proceeds through the legislative process, please refer to Seyfarth Shaw’s “Trading Secrets” blog at [www.tradesecretslaw.com](http://www.tradesecretslaw.com).

<sup>2</sup> See 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 (available at <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013PC0813>)

- bribery;
- deception;
- breach or inducement to breach a confidentiality agreement or any other duty to maintain secrecy; or
- any other conduct which, under the circumstances, is considered contrary to honest commercial practices.

Second, the Directive establishes a common set of procedures and remedies for trade secret holders where there is unlawful acquisition, use, or disclosure of that trade secret, including a two-year statute of limitations for bringing claims for trade secret misappropriation.

The Directive also includes rules on the preservation of trade secrets during litigation.

Third, the Directive provides for uniform remedies for civil law redress for trade secrets misappropriation across Member States, including injunctive and declaratory relief, damages, and sanctions for non-compliance. The Directive also includes various reporting provisions.

Because the proposed Directive was only recently published, and the parliamentary process is unlikely to start in earnest until at least until Autumn, 2014, it is unclear whether the Directive as currently written will be implemented, if at all. If the Directive does come into force, Member States will still need to implement the Directive within two years from the date of adoption of the Directive into their own national law. EU directives lay down certain end results that must be achieved in every Member State by a specific date. Individual Member States must adapt their laws to meet these goals, but are free to decide how to do so.

The full text of the Directive is attached.