



European challenges in the field of trade secrets

Has the EU Trade Secrets Directive brought strong(er) enforcement tools and what should we do next to tackle challenges?

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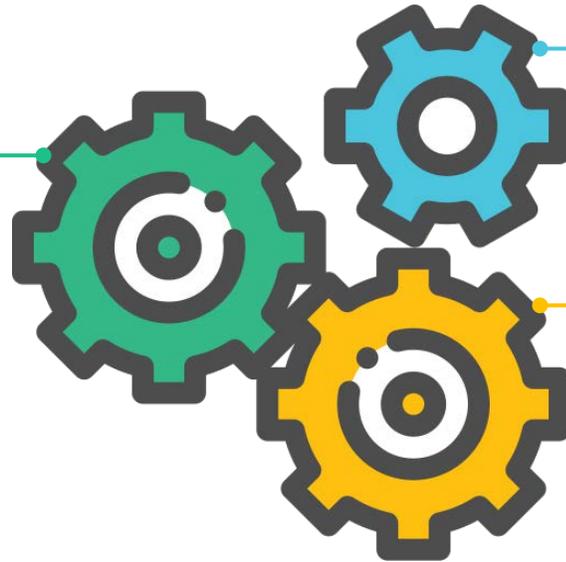
Intellectual Property Unit, European Commission, DG GROW

Zagreb, 20.02.2020

What is a trade secret?

An information that...

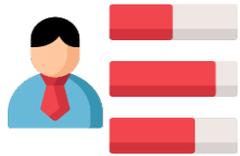
has **commercial value** because it is secret



is **secret** (not generally known or accessible)

has been subject to **reasonable steps to keep it secret**

Trade secrets and innovation



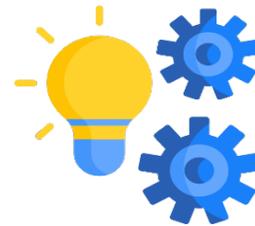
Competitiveness

Large and small businesses use confidentiality as a protection tool and rely on trade secrets for competitiveness



Sharing knowledge

Trade Secrets protection facilitate sharing among partners by enabling recovery should a third party misappropriate



Innovation

Trade Secrets protection is conducive to investments in innovation



Research

Trade Secrets protection improves legal certainty of collaborative R&D

Trade secrets complement IPR protection

Studies show that an extensive field of information, knowledge and innovation outputs cannot be captured by IPRs

Protection by IPR demands disclosure – trade secrets protected if confidential

Business research is normally conducted in secrecy in order to safeguard the patentability of future outputs



In some areas patents and trade secrets are used in a combined fashion; trade secrets are often used in areas where patent protection does not reach

The combined use of trade secrets and other IPR creates synergies which are attractive to intellectual property assets management

Need for harmonisation

Figure 4 – The fragmentation of the legal protection (selected measures)
 Source of data: Baker & McKenzie (2013).

Selected measures	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
Definition of trade secret in civil law legislation																											
Availability of injunctions against third party in good faith																											
Injunctions not limited in time																											
Availability of orders on destruction of TS/resulting goods																											
Calculation of damages based on fair royalty fee																											
Performing rules on preservation of secrecy (civil proceedings)																											
Sufficient criminal legislation																											

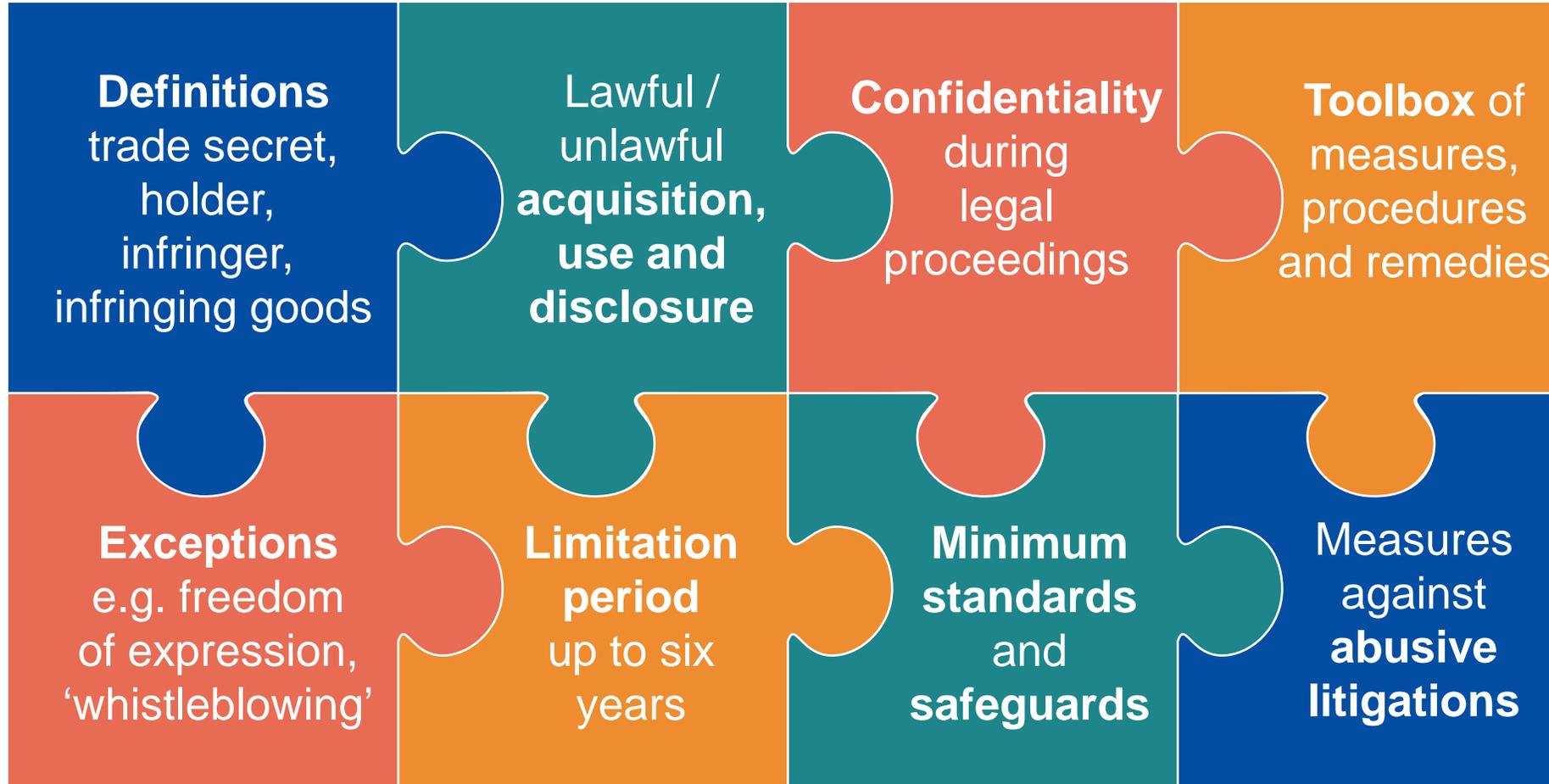
N.B. A blank cell means that the measure concerned is not provided for in national legislation

- Several Member States did not have specific legislation on Trade Secrets, relying on general principles of civil law, and/or jurisprudence.
- In some Member States trade secrets were only protected against misappropriation by competitors.
- Legal remedies against misappropriation differ across the EU.
- Many courts did not have mechanisms to ensure the confidentiality of trade secrets during and after litigation.

EU Trade Secrets Directive

- The Directive harmonises the laws of Member States on **civil law** redress **against misappropriation** of trade secrets (no harmonisation of criminal law)
- In other words, acquisition, use or disclosure of the trade secret in cases where:
 - there is no consent of the trade secret holder
 - and there is breach of law, breach of contract or use of dishonest means
- The Directive grants the possibility of getting civil law redress such as injunctions, compensation and seizure of goods, but no criminal sanctions

EU Trade Secrets Directive



Enforcement tools



Preservation of confidentiality in the course of legal proceedings (TSD Article 9)

- obligation to keep (alleged) trade secret confidential
- restricted access to documents, hearings



Provisional and precautionary measures (TSD Articles 10-11)

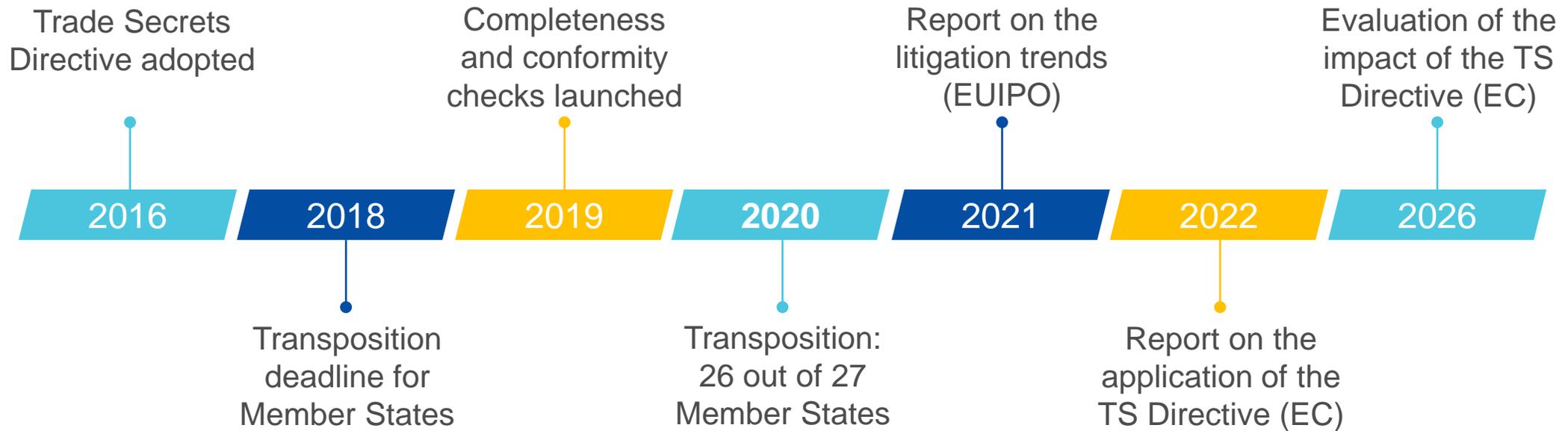
- the cessation/prohibition of the use/disclosure of the trade secret on a provisional basis
- the prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes
- the seizure/delivery up of the suspected infringing goods so as to prevent their entry into/circulation on the market



Measures resulting from a final decision (TSD Articles 12-15)

- permanent injunction
- corrective measures (recall, depriving of infringing quality, destruction/withdrawal from the market)
- damages
- publication of judicial decision

Where are we?



Cybertheft of Trade Secrets

EU businesses are exposed to the threat

60.000.000.000 €/year
1.000.000 jobs*

Loss of economic growth
and jobs* in the EU
according to ECIPE

*projection 2025

94%

Of all cyber-attacks to the
EU manufacturing, finance,
ICT and healthcare sector
are driven by industrial
espionage

469 days

Average time-lag between
an intrusion and its
detection

EU policy framework

Communication 2016/410 “Strengthening Europe’s Cyber Resilience System and Fostering a Competitive and Innovative Cybersecurity Industry”

- with particular reference to the **need to protect trade secrets from cyber-intrusions**
- Including through trusted reporting channels

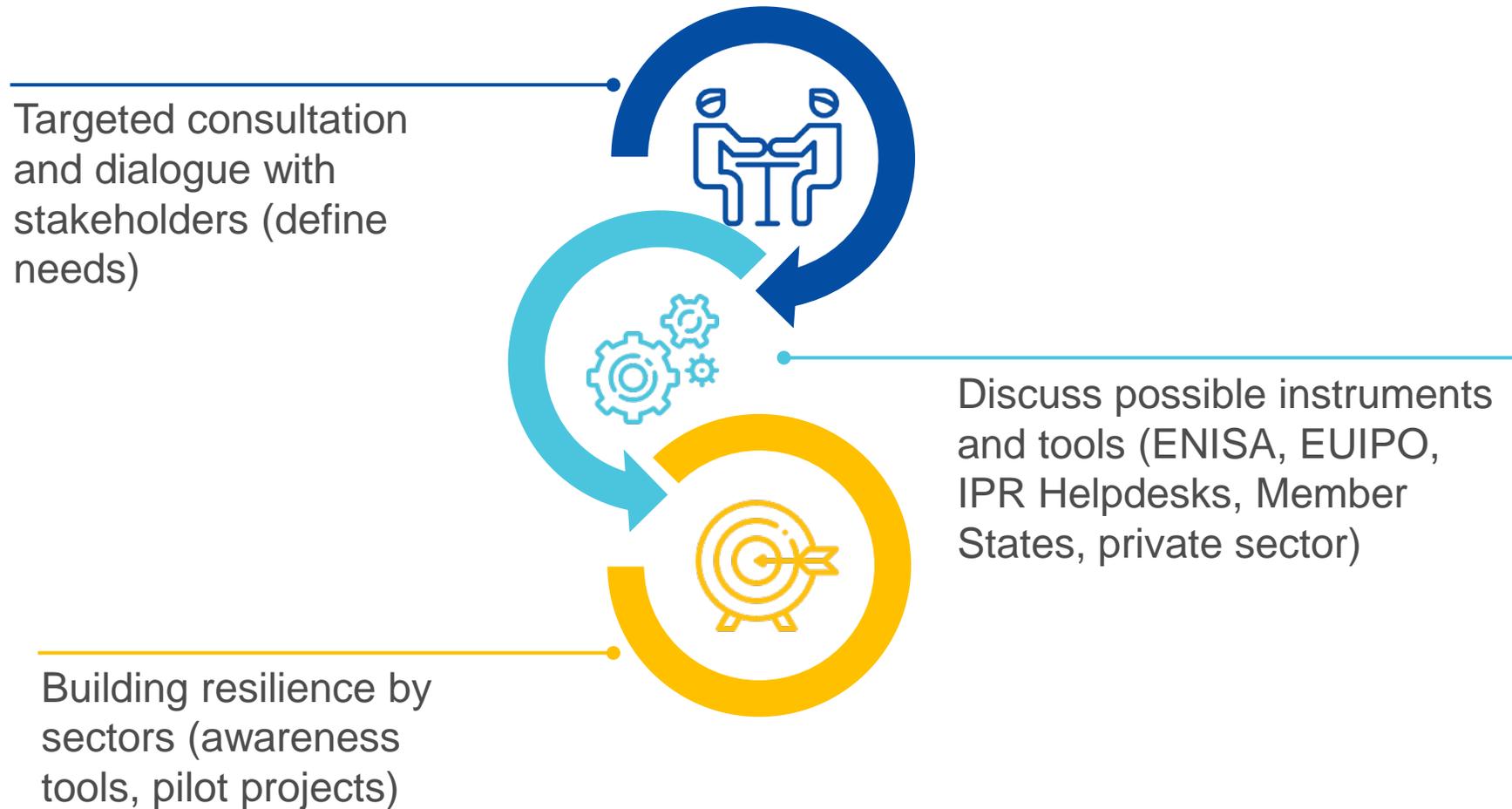
Trade Secrets Directive

- definition of trade secret, enforcement tools

Study “The scale and impact of industrial espionage and theft of trade secrets through cyber” (December 2018)

A certain level of active efforts is required, appropriate to the circumstances, by which each company must act to guard its trade secrets

How we plan to act



Keep in touch



Trade secrets

https://ec.europa.eu/growth/industry/intellectual-property/trade-secrets_en



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Thank you



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