

Sam Gyimah MP
Department for Business, Energy & Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Wednesday 14 March 2018

Dear Mr Gyimah,

Transposition of EU Trade Secrets Directive

We are writing regarding the UK's imminent transposition of the EU's Trade Secrets Directive. Our primary concern is to ensure that this law which is aimed at protecting legitimate trade secrets, does not hinder public scrutiny of corporate activities, or the publication of stories such as 'Luxleaks' which exposed the widespread use of officially-sanctioned corporate tax avoidance schemes in Luxembourg. We have a number of concerns regarding the Intellectual Property Office's consultation on the UK application of the directive, including that it does not propose to transpose any of the important exceptions set out in Article 5 of the original directive. We firmly disagree with this approach, for the following reasons:

Whistleblowers. We consider that protections for whistleblowers are essential and it is imperative that the existing provisions in UK law contained in the Public Interest Disclosure Act are included and strengthened within the transposed directive. We otherwise fear that transposition would create legal ambiguity about protection for whistleblowers in the UK and a 'chilling effect' which could stop whistleblowers from coming forward to raise public interest concerns in the future. Similar protections are required for **trade union representatives** who legitimately disclose information about a company's activities to other employees or the media.

Journalistic freedom. When transposing the directive, the UK should ensure that the exception for journalists on the grounds of freedom of expression (Article 5) is unambiguously included. This is to ensure that there is a clear direction for both journalists and judges when applying the directive. This protection was a clear commitment arising out of the debates around the 'Snoopers Charter' and yet no progress has been made by the UK government to date.

Public authorities and the information they release. We wish to ensure that the Trade Secrets Directive does not, even inadvertently, lead to a 'chilling effect' on public authorities who fear being sued for damages when releasing commercial data under freedom of information laws. The directive must not undermine freedom of information laws by creating legal ambiguity about the situations in which commercial information can be legitimately released.

We have the following additional concerns:

- UK transposition should introduce a limitation period of one year maximum for companies to bring a legitimate case under the directive. We are very concerned that the consultation currently proposes the maximum allowable limit of six years (five years in Scotland). This is demonstrably unfair when compared with the three month time limit afforded to workers with a whistleblower claim under the Public Interest Disclosure Act. Furthermore, there should be strict restrictions on the damages which can be sought, especially from individuals such as employees, yet this is not currently indicated in the consultation's proposal.

- The transposition should include strong language which penalises abusive litigation on trade secrets which is aimed at preventing legitimate scrutiny of commercial activities. We are disappointed to note that the IPO does not consider transposition of this Article (seven in the original directive) to be necessary.

We hope that you will be able to reassure us that you share our concerns and that the UK transposition of the Trade Secrets Directive will respect and strengthen the rights of whistleblowers, public authorities, trade unionists, journalists and employees. Our concerns emanate from the well-documented¹ fact that the development of the Trade Secrets Directive by the European Commission was undertaken with the cooperation of, and major inputs from, large commercial interests, and the European Parliament was not able to subsequently amend the directive sufficiently so as to place the public interest centre-stage. It is imperative that the UK's transposition of the directive remedies this imbalance.

We would be pleased to meet with you to discuss this matter further and we look forward to your response.

Yours sincerely,

- ARTICLE 19, Thomas Hughes, Executive Director
- Campaign Against the Arms Trade, Ann Feltham, Parliamentary Co-ordinator
- Corporate Europe Observatory, Vicky Cann, Campaigner
- Courage Foundation, Naomi Colvin, Acting Director
- DeSmog UK, Mat Hope, Editor
- Ethical Consumer, Rob Harrison, Director
- Friends of the Earth (England, Wales and Northern Ireland), Liz Hutchins, Director of
Campaigning Impact
- GeneWatch UK, Dr Helen Wallace, Director
- Global Witness, Charmian Gooch, Co-Founding Director
- Greenpeace UK, John Sauven, Executive Director
- Jubilee Debt Campaign, Sarah-Jayne Clifton, Director
- National Union of Journalists, Michelle Stanistreet, General Secretary
- Public Concern at Work, Francesca West, Chief Executive
- Real Media, Kam Sandhu, Editor/Founder
- Spinwatch, David Miller, Director
- Tax Justice Network, John Christensen, Director
- The Media Fund, Thomas Barlow, Founder
- Transparency International UK, Duncan Hames, Director of Policy
- Trade Justice Movement, Jean Blaylock, Coordinator
- We Own It, Cat Hobbs, Director
- WhistleblowersUK, Tom Lloyd, Chairman
- David Lewis, Professor of Employment Law and Head of the Whistleblowing Research Unit, Middlesex University

¹ <https://corporateeurope.org/power-lobbies/2015/04/towards-legalised-corporate-secrecy-eu>