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### 1

#### **Interp and Violation – Topical affs must reduce intellectual property protections for medicines.**

#### Three forms of IP protections for medicines

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Intellectual property (IP) protections for the biopharmaceutical sector provide incentives that help to promote the discovery and development of life-saving medicines for patients and foster a competitive market for generic and biosimilar medicines. There are three forms of IP protections critical to biopharmaceutical development, and although they work together in a complementary fashion, each is distinct and governed by different statutory provisions.

In today’s IP Explained, we unpack the differences between each protection and consider how they work together to balance innovation and competition.

Patents are unique in that they are property rights granted by the United States Patent and Trademark Office and can be issued or expire independent of a drug’s regulatory approval status. Patents provide inventors in all industries the exclusive right to sell an invention for a set period of time before others may copy and sell it. They both foster invention and promote competition by requiring detailed public disclosure of a new technology. However, patents alone do not grant authorization to market new drugs; manufacturers must still seek Food and Drug Administration (FDA) approval to bring a new drug to market. Although patents are important to all technology-intensive industries, [they are particularly vital to the biopharmaceutical industry](https://catalyst.phrma.org/ip-explained-why-patents-are-so-critical-to-biopharmaceutical-innovation), given the lengthy, costly and highly uncertain research and development (R&D) process that leads to new and improved medicines. While patents may prevent a competitor from bringing an exact duplicate of a medicine to market, they do not act as an absolute bar against bringing similar, non-infringing, products to market. And once the patent has expired, the invention can be freely used by anyone.

Data exclusivity, also referred to as data protection, prohibits third parties, for a limited time, from using or relying upon an innovator’s valuable clinical data to obtain FDA approval for their product. Data protection does not prevent third parties from conducting their own R&D and clinical trials to seek and obtain regulatory approval for a competing product. In this way, it operates very differently than a “market exclusivity,” which is described below.

Market exclusivity is often confused with data exclusivity but they’re actually very different. Market exclusivity prohibits a third party from obtaining FDA approval for a particular pharmaceutical product and entering the market, for a set period of time, even with its own data. This form of IP protection is intended to encourage investment in R&D when market-based incentives are insufficient such as with [orphan drugs](https://catalyst.phrma.org/icymi-orphan-drug-development-brings-unique-challenges). The Orphan Drug Act (ODA) incentivizes the development of new medicines to treat diseases affecting small patient populations, often referred to as rare diseases. Specifically, the ODA blocks third parties from obtaining approval of a product that is the same as an orphan drug, for the same use, for seven years.

#### Violation -- the aff is about trade secrets "pertain[ing] to revealing misconduct, wrongdoing, or illegal activity, or to protecting the general public interest." (lines from their ev) These are all things aren't inherent to medicines -- the aff is about people reporting companies for being unethical

#### The violation is obvious and the counter interp explodes limits to include marketing strategies, algorithms, and customer lists

Farkas ND Brian Farkas [ssociate attorney at Goetz Fitzpatrick LLP in New York, focusing his practice on commercial litigation, arbitration and intellectual property. Brian earned his B.A. from Vassar College and J.D. from Cardozo School of Law ] “Trade Secret Basics FAQ” No Date <https://www.nolo.com/legal-encyclopedia/trade-secret-basics-faq.html#1743223> SM

What is a trade secret?

Trade secrets are a form of intellectual property. According to the law of most U.S. states, a trade secret may consist of any formula, pattern, physical device, idea, process or compilation of information that both:

1. provides the owner of the information with a competitive advantage in the marketplace, and
2. is treated in a way that can reasonably be expected to prevent the public or competitors from learning about it, absent improper acquisition or theft.

Some examples of potential trade secrets include:

the formula for an energy drink

survey methods used by professional political pollsters

recipes for cookies

a new invention for which a patent application has not yet been filed

marketing strategies

manufacturing techniques, and

computer algorithms.

Unlike other forms of intellectual property, such as patents, copyrights, and trademarks, which generally require registration in order to be fully effective, trade secrets are essentially a "do-it-yourself" form of protection.

You do not register with the government to secure your trade secret; you most simply keep the information under wraps. Trade secret protection lasts for as long as the secret is kept confidential without any statutory limitations period. However, once a trade secret is made available to the public, trade secret protection ends.

What types of information can trade secrets protect?

Copyright, patents, and trademarks are fairly well-known forms of intellectual property protection. But trade secrets are another extremely useful form of protection that often protects valuable technical or confidential information. Here's a sampling of what trade secrets can protect:

Ideas that offer a business a competitive advantage, thereby enabling a company or individual to get a "head start" on the competition. This might include, for example, an idea for a new type of product or marketing approach.

Competitors' knowledge that a product or service is under development and its functional or technical attributes including, for example, the workings of a new software program.

Valuable business information such as marketing plans, cost and price information, and customer lists.

So-called "negative know-how," meaning information learned during the course of research and development on what not to do or what does not work optimally. Often, this information is almost as valuable as the products or techniques that do work.

Virtually any other information that has some value and is not generally known by competitors. This might include, for example, a list of customers ranked by the profitability of their business.

#### Negate for limits – explodes the topic to anything from random trade secrets to trademark pictures and symbols to copyrights which destroys core generics like innovation that obviously don’t link to trademarks – core of the topic is about proprietary rights to ideas and innovations. A big case list with no unifying generics destroy neg prep – disincentivizes in depth topic research and leaves the neg behind.

#### Either they violate or they don’t solve – first adv i/ls rely on whistleblowers speaking out about “irregularities when workers lack protective equipment” or “when medical supplies are being corrupted” both of which are COMPLETELY IRRELEVANT to medicine and just vaguely about the medical sector

#### No RVIs—it’s your burden to be fair and T—same reason you don’t win for answering inherency or putting defense on a disad.

### 2

#### CP: The member states of the European Union should increase intellectual property protections for trade secrets as outlined by Brant and Lohse – solves unification – EU protections just have to be consistent, not high or low

Brant and Lohse 14(Jennifer Brant and Sebastian Lohse, [], 2014, ““, No Publication, accessed: 9-18-2021, https://iccwbo.org/content/uploads/sites/3/2017/02/ICC-Research-Trade-Secrets-english.pdf) ajs

In addition to its own actions, a firm’s ability to retain control over its confidential data, and to recover without exposing itself to further risk, will depend in large part on the legal frameworks in relevant jurisdictions.

The fragmentation of trade secret protection frameworks creates major challenges, given the globalized nature of doing business and the prevalence of open innovation. Convergence of trade secret legislation across jurisdictions could provide legal certainty and enable owners of trade secrets to more effectively address misappropriation, wherever initiated. This in turn could enhance knowledge flows and cross-border investments in R&D. Policymakers should address trade secrets systematically in free trade agreements, such as the Trans-Pacific Partnership Agreement and the Trans-Atlantic Trade and Investment Partnership Agreement. In particular, policymakers should work to establish common rules to address cross-border misappropriation cases.

Action at the domestic level will be an important complement to such international efforts. Policymakers should enact clear provisions on trade secret protection, whether in a stand-alone law or as part of legislation providing for the protection of other types of IPRs. Trade secret laws should include a clear definition of trade secrets based at least on Article 39.2 of the TRIPS Agreement. They should define and criminalize conduct amounting to a serious trade secret violation, including third party misappropriation, while providing for both individual and corporate liability. Trade secret protection frameworks should contain a comprehensive set of interim and final remedies. They should include effective tools to preserve, facilitate, and secure the gathering of evidence, including disclosure orders and ex parte search orders for premises and IT systems. Criminal and civil remedies, including damages, must be structured so as to constitute a deterrent to trade secret misappropriation. Policymakers should also ensure confidentiality of trade secrets during legal and administrative proceedings, so that recovery does not lead to further disclosure and losses for the trade secret owner. Finally, trade secret and related laws should adopt a balanced approach to employee mobility, providing for the protection of confidential information without unduly restricting individuals’ opportunities for professional development.

Policymakers and industry groups may consider providing training for SMEs, to guide them in using trade secrets as part of their intellectual asset management strategies. Compared to larger firms, SMEs have relatively lower levels of experience with and fewer resources to dedicate to IP management. Innovative SMEs are likely to benefit from training on the appropriate actions they must take to protect confidential business information, in order to be able to enforce their rights before the courts in the event of misappropriation. They could also benefit from insights into how to institute effective processes for managing confidential information internally and vis-à-vis partners.

#### Trade secrets create incentive for collaboration and drive innovation through profit motives – that turns the aff because companies will increase secrecy.

ICC 14 “TRADE SECRETS: TOOLS FOR INNOVATION AND COLLABORATION” 2014 International Chamber of Commerce (ICC) <https://iccwbo.org/content/uploads/sites/3/2017/02/ICC-Research-Trade-Secrets-english.pdf> SM

Trade secrets are often the “crown jewels” of a firm’s intellectual capital, developed over many years through myriad interactions and projects (Jorda 2007). According to recent estimates, trade secrets encompass some 70 per cent of the value of companies’ intellectual assets (Bird & Jain 2008; Forrester 2010; Schwarts & Weil 2010). In one survey, respondents rated proprietary technology highly as a key source of competitive advantage, and a large majority of respondents (88 per cent) cited skills and knowledge as the most important intellectual assets (IPOA 2003).

The economic rationale for trade secret protection is two-fold: first, it enables firms to avoid overinvesting in secrecy and thus to use their resources more cost-effectively, and, second, it facilitates the diffusion of knowledge by creating a safe environment for firms to share information that, for whatever reason, they have not patented (Friedman et al 1991; Arrasvuori et al. 2014). In relation to this last point, trade secret protection is particularly well suited to current approaches to innovation, which emphasize incremental change and collaboration.

As empirical evidence shows, over-investment in secrecy implies not only wasted resources, but also lost opportunities for collaboration when information cannot be safely shared externally. Over-investment in secrecy may be specific, in the form of over-protection of a particular idea, or it can be general, in the sense that a company may impose too many restrictions on employees and business partners, or may over-spend on physical infrastructure to protect confidential information.

The legal protections provided under trade secret laws serve as a substitute for physical and also contractual secrecy (Chally 2008; Lemley 2008). For instance, when hiring and assigning employees, an employer can focus on candidates’ skills and appropriateness for particular roles, rather than choosing people exclusively from within a trusted inner circle (Risch 2007). On the other hand, companies’ actions to prevent leakage of trade secrets sometimes appear to be at odds with employee mobility and the use by an employee of learned skills in subsequent employment (Rowe 2005). Trade secret protection laws that provide appropriate disincentives for misappropriation help to strike a balance between employee mobility and personal development, on the one hand, and the legitimate interests of companies in securing confidentiality of their proprietary information, on the other hand.

Trade secret laws also facilitate flows of knowledge by making it less risky for firms to share knowledge. Like patents, trade secrets provide a partial solution to Arrow’s Information Paradox (Lemley 2008). This paradox relates to the difficulties an inventor faces if he or she needs to share a potentially valuable but secret idea in order to exploit it commercially. Without appropriate safeguards, once knowledge is exchanged between parties, there are few disincentives against using that knowledge for commercial benefit. Thus, potential partners may withhold information because they fear creating a new competitor. However, external cooperation is an increasingly important feature of firms’ innovation strategies, enabling them to combine expertise and resources, and thus to accelerate technology development as well as commercialization. By providing additional security, trade secret protection enables the sharing of knowledge between parties (Arrasvuori et al. 2014).

The protection afforded by trade secrets matches the needs of contemporary modes of innovation. Today, innovation is increasingly characterized by a high degree of collaboration and also by emphasis on incremental progress. Adaptation of existing solutions to local environments, one form of incremental innovation, is especially relevant in developing countries. Trade secrets help to establish secure channels for exchanges of know-how, helping to build absorptive capacity, which is defined as the ability to identify, assimilate, and apply new knowledge. They also provide an alternative tool for protecting gradual advancements for which patents may not be available or financially practical (Maskus 2012). Finally, given their relative affordability, trade secrets can provide a resource-effective line of defence to SMEs in countries at all levels of development.

To summarize, trade secrets are directly implicated in the dissemination of proprietary skills and knowledge, stimulating broader disclosure and use of information. As patent protection encourages the sharing of proprietary technology, trade secret protection facilitates the sharing of proprietary know-how and expertise (Box 3). The combined deployment of trade secrets and patents provides exclusivity to the innovator, while furthering technology transfer through licensing and other transactions (Jorda 2007). Licensing agreements that include conveyances for both forms of protection are credited with stimulating the most value creation (Cummings 2008).

#### EU’s key

EPM Scientific 19 (202, [], 4-1-2019, “Why US Biotech Companies Should Consider Launching in Europe Directly“, No Publication, accessed: 9-18-2021, https://www.epmscientific.com/blog/2019/04/why-us-biotech-companies-should-consider-launching-in-europe-directly) ajs

​In the past, biotech startups have sought to partner with big pharmaceutical companies.  However, the market is changing — in 2019 it may be better to license directly in Europe.

For a US-based pharmaceutical company, the prospect of taking a new drug to market in Europe can be daunting.  Many young biotech companies decide to [out-license for royalty](https://www.researchgate.net/publication/327407817_Factors_Affecting_Pricing_in_Patent_Licensing_Contracts_in_the_Biopharmaceutical_Industry) or milestone payments instead of navigating the tricky path to commercializing their own product. However, this strategy may be a mistake. Let’s examine why...

Drug licensing in Europe vs. the US

Europe and the US dominate the [global biotech market](https://www.thebalance.com/ranking-the-top-biotech-countries-3973287) (although China and Japan are important growth markets of their own). This trend is not likely to change, a [2019 iQvia report](https://www.iqvia.com/institute/reports/the-global-use-of-medicine-in-2019-and-outlook-to-2023) predicted that global pharmaceutical spending will exceed $1.5 trillion by 2023 with market leaders in the US ($625-665 billion,  up 4-7%) and Europe ($195-225 billion, up 1-4%).   
  
However, the US and Europe have very [different requirements](https://www.fool.com/investing/2018/05/19/how-drug-approvals-in-europe-are-different-than-in.aspx) for clinical trials and new drug applications.  Historically, the [US Food and Drug Administration (FDA)](https://www.fda.gov/drugs/developmentapprovalprocess/druginnovation/default.htm) has been seen as a [centralized consumer protection agency](https://www.sciencedirect.com/science/article/pii/S2452302X16300638) — with the critique that it slows approval with safety considerations.  In contrast, the [EU European Medicines Agency (EMA)](https://www.ema.europa.eu/en/human-regulatory/marketing-authorisation/pre-authorisation-guidance) was designed to [standardize commercial rules](https://www.sciencedirect.com/science/article/pii/S2452302X16300638) — with the critique that it primarily preserves commercial interests.  There is a debate as to which system approves drugs quicker, a [2015 analysis](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6091770/) indicates that the US is likely the faster of the two approval processes (304 days as compared to 478 in Europe).   
  
Small companies may not want to invest in two very-different approval processes.  Traditionally, licensing has been regarded as a good exit strategy for biotech and small pharmaceutical companies to help [manage risk](https://www.researchgate.net/publication/327407817_Factors_Affecting_Pricing_in_Patent_Licensing_Contracts_in_the_Biopharmaceutical_Industry), which is why licensing, royalties, mergers and acquisitions are such major drivers of the biotech and pharma industries.   
  
But is European licensing really the best exit strategy for US companies in 2019?

Data Supporting European Launch over License

A [2013 analysis](http://bionest.com/wp-content/uploads/2015/10/In_Vivo_Article_Bionest_web_final_IV1312.pdf) published in the Business and Medicine Report examined companies facing the launch-vs-license dilemma.    
  
Using public data from the [EMA database](http://www.ema.europa.eu/ema/index.jsp?curl=pages/regulation/general/eudra_gmp_database.jsp&mid=WC0b01ac058006e06e)the study examined US-based companies who had chosen to market their primary drug in the US, but were then facing the European launch-or-license decision.  From 2003-2013 the study identified 25 companies fitting this criterion, 9 of whom chose to launch directly in Europe and 16 of whom chose to license for royalty and/or milestone payments. The study found that the “launch companies significantly outperformed their licensing peers” and that “launching a drug alone may lead to significant financial reward and success”.  To put numbers behind this claim, in a two-year window (one year prior to EMA approval to one year post-approval) the median share price of the launch companies increased by 46%, as compared to 2% for the out-licensing companies.    
  
Now this study had small numbers and a wide range of variation in the companies performances.  But it gives an important insight into the benefits of navigating European regulatory structures.  
  
While there are likely many factors contributing to this data, it's possible that we’re simply seeing a direct result of the EU's new centralization. Before 1995 there were [15 different national bodies](https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm246776.htm) regulating drugs in the European Union. Since the formation of the EU, what used to be a country-specific launch in Europe has become a centralized review leading to efficient access to Europe’s population of [741 million people](https://www.google.com/search?q=europe+population&rlz=1C5CHFA_enCA730CA732&oq=europe+population&aqs=chrome..69i57j0l5.2374j0j4&sourceid=chrome&ie=UTF-8).   
  
Regardless, the data suggests that the conventional wisdom is no longer true. Biotech companies should strongly consider launching directly in Europe.

In conclusion

Traditionally biotech companies have sought to be acquired by, or partner with large pharmaceutical companies.  However, this model is changing. Now companies may have more success going straight to market in Europe.

#### Biopharmaceutical innovation is key to prevent future pandemics and bioterror – turns case

Marjanovic and Feijao 20 [(Sonja Marjanovic, Ph.D., Judge Business School, University of Cambridge. Carolina Feijao, Ph.D. in biochemistry, University of Cambridge; M.Sc. in quantitative biology, Imperial College London; B.Sc. in biology, University of Lisbon.) "How to Best Enable Pharma Innovation Beyond the COVID-19 Crisis," RAND Corporation, 05-2020, https://www.rand.org/pubs/perspectives/PEA407-1.html] TDI

As key actors in the healthcare innovation landscape, pharmaceutical and life sciences companies have been called on to develop medicines, vaccines and diagnostics for pressing public health challenges. The COVID-19 crisis is one such challenge, but there are many others. For example, MERS, SARS, Ebola, Zika and avian and swine flu are also infectious diseases that represent public health threats. Infectious agents such as anthrax, smallpox and tularemia could present threats in a bioterrorism context.1 The general threat to public health that is posed by antimicrobial resistance is also well-recognised as an area in need of pharmaceutical innovation. Innovating in response to these challenges does not always align well with pharmaceutical industry commercial models, shareholder expectations and competition within the industry. However, the expertise, networks and infrastructure that industry has within its reach, as well as public expectations and the moral imperative, make pharmaceutical companies and the wider life sciences sector an indispensable partner in the search for solutions that save lives. This perspective argues for the need to establish more sustainable and scalable ways of incentivising pharmaceutical innovation in response to infectious disease threats to public health. It considers both past and current examples of efforts to mobilise pharmaceutical innovation in high commercial risk areas, including in the context of current efforts to respond to the COVID-19 pandemic. In global pandemic crises like COVID-19, the urgency and scale of the crisis – as well as the spotlight placed on pharmaceutical companies – mean that contributing to the search for effective medicines, vaccines or diagnostics is essential for socially responsible companies in the sector. 2 It is therefore unsurprising that we are seeing industry-wide efforts unfold at unprecedented scale and pace. Whereas there is always scope for more activity, industry is currently contributing in a variety of ways. Examples include pharmaceutical companies donating existing compounds to assess their utility in the fight against COVID19; screening existing compound libraries in-house or with partners to see if they can be repurposed; accelerating trials for potentially effective medicine or vaccine candidates; and in some cases rapidly accelerating in-house research and development to discover new treatments or vaccine agents and develop diagnostics tests.3,4 Pharmaceutical companies are collaborating with each other in some of these efforts and participating in global R&D partnerships (such as the Innovative Medicines Initiative effort to accelerate the development of potential therapies for COVID-19) and supporting national efforts to expand diagnosis and testing capacity and ensure affordable and ready access to potential solutions.3,5,6 The primary purpose of such innovation is to benefit patients and wider population health. Although there are also reputational benefits from involvement that can be realised across the industry, there are likely to be relatively few companies that are ‘commercial’ winners. Those who might gain substantial revenues will be under pressure not to be seen as profiting from the pandemic. In the United Kingdom for example, GSK has stated that it does not expect to profit from its COVID-19 related activities and that any gains will be invested in supporting research and long-term pandemic preparedness, as well as in developing products that would be affordable in the world’s poorest countries.7 Similarly, in the United States AbbVie has waived intellectual property rights for an existing combination product that is being tested for therapeutic potential against COVID-19, which would support affordability and allow for a supply of generics.8,9 Johnson & Johnson has stated that its potential vaccine – which is expected to begin trials – will be available on a not-for-profit basis during the pandemic.10 Pharma is mobilising substantial efforts to rise to the COVID-19 challenge at hand. However, we need to consider how pharmaceutical innovation for responding to emerging infectious diseases can best be enabled beyond the current crisis. Many public health threats (including those associated with other infectious diseases, bioterrorism agents and antimicrobial resistance) are urgently in need of pharmaceutical innovation, even if their impacts are not as visible to society as COVID-19 is in the immediate term. The pharmaceutical industry has responded to previous public health emergencies associated with infectious disease in recent times – for example those associated with Ebola and Zika outbreaks.11 However, it has done so to a lesser scale than for COVID-19 and with contributions from fewer companies. Similarly, levels of activity in response to the threat of antimicrobial resistance are still low.12 There are important policy questions as to whether – and how – industry could engage with such public health threats to an even greater extent under improved innovation conditions.

#### COVID incentivizes engineered bioterror- extinction

Walsh, 20 -- Axios Future correspondent [Bryan Walsh, "The coronavirus pandemic reawakens bioweapon fears," Axios, 5-14-2020, https://www.axios.com/coronavirus-pandemic-pathogen-bioweapon-45417c86-52aa-41b1-8a99-44a6e597d3a8.html, accessed 9-7-2020]

The coronavirus pandemic reawakens bioweapon fears

The immense human and economic toll of the COVID-19 pandemic only underscores the threat posed by pathogens that could be deliberately engineered and released.

Why it matters: New technology like gene editing and DNA synthesis has made the creation of more virulent pathogens easier. Yet security and regulation efforts haven't kept pace with the science.

What's happening: Despite some claims by the White House, overwhelming scientific evidence indicates that the novel coronavirus was not accidentally released from a lab or deliberately engineered, but naturally spilled over from an animal source.

That doesn't mean the threat from bioweapons isn't dire. Along with AI, engineered pandemics are widely considered the biggest existential risk facing humanity.

That's in part because a pathogen could be engineered in a lab for maximum contagiousness and virulence, well beyond what would arise through natural selection.

Case in point: a 2018 pandemic simulation put on by the Johns Hopkins Center for Health Security featured a fictional engineered virus called Clade X that combined the contagiousness of the common cold with the virulence of the real-life Nipah virus, which has a mortality rate of 40-75%. The resulting simulated global outbreak killed 150 million people.

COVID-19 isn't anywhere near that fatal, but the pandemic has shown the vulnerability of the U.S. and the world to biological threats both natural and manmade.

"Potential adversaries are of course seeing the same things we’re seeing," says Richard Pilch of the Middlebury Institute of International Studies. "Anyone looking for a radical leveling approach — whether a state actor like North Korea or a motivated terrorist organization — may be influenced by COVID-19 to consider pursuing a biological weapons capability."

Background: Bioweapons were officially banned by the Biological Weapons Convention in 1975, though North Korea is suspected of maintaining an offensive bioweapons program.

A particular concern about biowarfare and bioterror, though, is that many of the tools and methods that could be used to create a weaponized virus are largely indistinguishable from those used in the course of legitimate scientific research. This makes biotechnology "dual-use" — and that much more difficult to safely regulate without cutting off research that could be vitally important.

While earlier bioweapons fears focused on the possibility that a state or terror group could try to weaponize a known dangerous agent like smallpox — which would require somehow obtaining restricted pathogens — new technology means that someone could obtain the genetic sequence of a germ online and synthesize it in the lab.

"If you've been trained in a relevant technical discipline, that means you can make almost any potentially harmful agent that you're aware of," says Kevin Esvelt, a biologist at the MIT Media Lab and a member of the CDC's Biological Agent Containment Working Group. That would include the novel coronavirus that causes COVID-19, which was recently synthesized from its genetic sequence in a study published in Nature.

How it works: Currently, synthetic DNA is ordered through commercial suppliers. But while most suppliers screen DNA orders for the sequences of dangerous pathogens, they're not required to — and not all do, which means safety efforts are "incomplete, inaccurate, and insecure," says Esvelt.

Screening efforts that look for the genetic sequences of known pathogens also wouldn't necessarily be able to detect when synthetic DNA was being used to make something entirely novel and dangerous.

In the near future, desktop DNA synthesizers may be able to generate synthetic DNA in the lab, cutting out the need for commercial suppliers — and potential security screenings.

The democratization of biotechnology could unleash a wave of creativity and innovation, just as the democratization of personal computing did. But it also increases the number of people who could potentially make a dangerous engineered virus, whether deliberately or by accident.

### 3

#### CP Text: The member states of the European Union ought to provide financial rewards for whistleblowers related to medicines, modelled after the US bounty system established by the Dodd-Frank Act of 2010.

#### Solves betterthan the aff—empirics – the problem isn’t the problem that whistleblowers don’t win disputes, its that they don’t come forward

**Maslen 2018** (Caitlin, Research Associate at Transparency International. MA in Corruption and Governance from the University of Sussex. “Whistleblower Reward Programs” (Anti-Corruption Helpdesk, Transparency International, <https://knowledgehub.transparency.org/assets/uploads/helpdesk/Whistleblower-Reward-Programmes-2018.pdf> 27 September 2018)DR 21

**Increasing the quantity of disclosures**

Whilst protection schemes may negate the severity of personal risks caused by whistleblowing, some **research contends that** reward programmes are even more effective at counter-balancing the possible dangers. Rewards go further than compensation for damages and instead motivate whistleblowers through awards of funds. Research into the behaviour of managers and employees induced by the U.S. bounty scheme, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), has demonstrated that employees will perform a costbenefit analysis when considering whistleblowing (Franke, Moser and Simons 2016). In order for incentives to be effective, the rewards must be high enough to compensate for retaliation charges (Franke, Moser and Simons 2016). The study concluded that if rewards outweigh the anticipated costs of retaliation they would support an increase in disclosures (Franke, Moser, and Simons, 2016). **In the U.S**., increased monetary incentives have led to an 'unprecedented' number of investigations and greater recoveries (Kohn, 2014). Franke, Moser and Simons’ (2016) model does, however, suggest that as rewards increase, so does the risk of false accusations. This is we return to below in the section on false reports.

Public awareness

Whistleblower rewards are often given media coverage and may help to **change wider attitudes** on the act of blowing the whistle. **According to research** by UK-based law-firm RPC, the number of whistleblowers working in financial and professional services **rose primarily** as a result of greater public awareness of the option of whistleblowing (Craggs 2015). Rewards may then have a two-fold effect on the number of disclosures. Firstly, they garner public attention, which then leads to an increase in the number of whistleblowers coming forward.

Secondly, some claim that rewards work towards ending the stigmatisation of whistleblowers. One law firm that works with whistleblowers has praised **the U.S. bounty scheme**, the Dodd-Frank Act, stating that it both incentivises people to speak up and helps to change the traditional stigmas of whistleblowing (Kasperkevic 2015). They argue that as the government takes greater control over whistleblower protection and reward programmes, this leads to public awareness of the importance of reporting wrongdoing and thus encourages more people to come forward (Kasperkevic 2015).

**Cost effectiveness**

Reward programmes may lower public spending, as they are less costly than traditional investigative methods. Police officers and investigators consume real resources, whereas whistleblower rewards are simple wealth transfers (Givati 2016). Research into the theory of whistleblower rewards has shown that - as long as the risk of a false report is low enough - using a whistleblower and a reward programme is more economical than relying upon police officers (Givati 2016). Certain types of allegation are less likely to be prone to false reporting than others; the risk of false reports is likely lower where the reported wrongdoing concerns tax evasion or environmental damage, for instance, as the falsification of evidence would be difficult (Givati 2016).

**Internal compliance**

Reward programmes can help to strengthen internal compliance within organisations. Paying whistleblowers could counteract negative social pressures that favour silence (Bradley 2015). This in turn could contribute to the development of organisational norms that inculcate a more compliant, transparent and accountable workplace culture.

**Cartel deterrence**

One study of South Korea’s reward system found that a cartel's anti-competitive behaviour is weakened through the introduction of whistleblower rewards. If there are financial incentives for whistleblowing then those who have knowledge of cartel activities must be prevented from exposing misconduct through either threats or bribes (Stephan 2014). This makes existing infringements less stable and encourages distrust between cartel members (Stephan 2014). The efficiency of the cartel is reduced, as trust decreases and the costs of bribery increase in order to match the whistleblower reward (Stephan 2014). It should be noted that this benefit would only occur if the legislation allows co-conspirators to be considered whistleblowers, which is often not the case. The cartel may also choose to reduce the number of people in each firm that are directly involved in the cartel in order to diminish the risks caused by reward programmes.

### 4

#### CP: The member nations of the European union should enter into a prior and binding consultation with the World Health Organization over whether to reduce trade secret protections for medicines by requiring that plaintiffs prove that the acquisition, use, and disclosure of the trade secret did not pertain to revealing misconduct, wrongdoing, or illegal activity, or to protecting the general public interest. Member nations should support the proposal and adopt the results of consultation.

#### WHO says yes – it supports increasing the availability of generics and limiting TRIPS

Hoen 03 [(Ellen T., researcher at the University Medical Centre at the University of Groningen, The Netherlands who has been listed as one of the 50 most influential people in intellectual property by the journal Managing Intellectual Property, PhD from the University of Groningen) “TRIPS, Pharmaceutical Patents and Access to Essential Medicines: Seattle, Doha and Beyond,” Chicago Journal of International Law, 2003] JL

However, subsequent resolutions of the World Health Assembly have strengthened the WHO’s mandate in the trade arena. In 2001, the World Health Assembly adopted two resolutions in particular that had a bearing on the debate over TRIPS [30]. The resolutions addressed:

– the need to strengthen policies to increase the availability of generic drugs;

– and the need to evaluate the impact of TRIPS on access to drugs, local manufacturing capacity, and the development of new drugs

#### Consultation boosts strong leadership, authority, and cohesion among member states – key to WHO legitimacy

Gostin et al 15 [(Lawrence O., Linda D. & Timothy J. O’Neill Professor of Global Health Law at Georgetown University, Faculty Director of the O’Neill Institute for National & Global Health Law, Director of the World Health Organization Collaborating Center on Public Health Law & Human Rights, JD from Duke University) “The Normative Authority of the World Health Organization,” Georgetown University Law Center, 5/2/2015] JL

Members want the WHO to exert leadership, harmonize disparate activities, and set priorities. Yet they resist intrusions into their sovereignty, and want to exert control. In other words, ‘everyone desires coordination, but no one wants to be coordinated.’ States often ardently defend their geostrategic interests. As the Indonesian virus-sharing episode illustrates, the WHO is pulled between power blocs, with North America and Europe (the primary funders) on one side and emerging economies such as Brazil, China, and India on the other. An inherent tension exists between richer ‘net contributor’ states and poorer ‘net recipient’ states, with the former seeking smaller WHO budgets and the latter larger budgets.

Overall, national politics drive self-interest, with states resisting externally imposed obligations for funding and action. Some political leaders express antipathy to, even distrust of, UN institutions, viewing them as bureaucratic and inefficient. In this political environment, it is unsurprising that members fail to act as shareholders. Ebola placed into stark relief the failure of the international community to increase capacities as required by the IHR. Guinea, Liberia and Sierra Leone had some of the world's weakest health systems, with little capacity to either monitor or respond to the Ebola epidemic.20 This caused enormous suffering in West Africa and placed countries throughout the region e and the world e at risk. Member states should recognize that the health of their citizens depends on strengthening others' capacity. The WHO has a central role in creating systems to facilitate and encourage such cooperation.

The WHO cannot succeed unless members act as shareholders, foregoing a measure of sovereignty for the global common good. It is in all states' interests to have a strong global health leader, safeguarding health security, building health systems, and reducing health inequalities. But that will not happen unless members fund the Organization generously, grant it authority and flexibility, and hold it accountable.

#### WHO is critical to disease prevention – it is the only international institution that can disperse information, standardize global public health, and facilitate public-private cooperation

Murtugudde 20 [(Raghu, professor of atmospheric and oceanic science at the University of Maryland, PhD in mechanical engineering from Columbia University) “Why We Need the World Health Organization Now More Than Ever,” Science, 4/19/2020] JL

WHO continues to play an indispensable role during the current COVID-19 outbreak itself. In November 2018, the US National Academies of Sciences, Engineering and Medicine organised a workshop to explore lessons from past influenza outbreaks and so develop recommendations for pandemic preparedness for 2030. The salient findings serve well to underscore the critical role of WHO for humankind.

The world’s influenza burden has only increased in the last two decades, a period in which there have also been 30 new zoonotic diseases. A warming world with increasing humidity, lost habitats and industrial livestock/poultry farming has many opportunities for pathogens to move from animals and birds to humans. Increasing global connectivity simply catalyses this process, as much as it catalyses economic growth.

WHO coordinates health research, clinical trials, drug safety, vaccine development, surveillance, virus sharing, etc. The importance of WHO’s work on immunisation across the globe, especially with HIV, can hardly be overstated. It has a rich track record of collaborating with private-sector organisations to advance research and development of health solutions and improving their access in the global south.

It discharges its duties while maintaining a dynamic equilibrium between such diverse and powerful forces as national securities, economic interests, human rights and ethics. COVID-19 has highlighted how political calculations can hamper data-sharing and mitigation efforts within and across national borders, and WHO often simply becomes a convenient political scapegoat in such situations.

International Health Regulations, a 2005 agreement between 196 countries to work together for global health security, focuses on detection, assessment and reporting of public health events, and also includes non-pharmaceutical interventions such as travel and trade restrictions. WHO coordinates and helps build capacity to implement IHR.

#### WHO diplomacy solves great power conflict

Murphy 20 [(Chris, U.S. senator from Connecticut serving on the U.S. Senate Foreign Relations Committee) “The Answer is to Empower, Not Attack, the World Health Organization,” War on the Rocks, 4/21/2020] JL

The World Health Organization is critical to stopping disease outbreaks and strengthening public health systems in developing countries, where COVID-19 is starting to appear. Yemen announced its first infection earlier this month, and other countries in Africa, Asia and the Middle East are at severe risk. Millions of refugees rely on the World Health Organization for their health care, and millions of children rely on the WHO and UNICEF to access vaccines.

The World Health Organization is not perfect, but its team of doctors and public health experts have had major successes. Their most impressive claim to fame is the eradication of smallpox – no small feat. More recently, the World Health Organization has led an effort to rid the world of two of the three strains of polio, and they are close to completing the trifecta.

These investments are not just the right thing to do; they benefit the United States. Improving health outcomes abroad provides greater political and economic stability, increasing demand for U.S. exports. And, as we are all learning now, it is in America’s national security interest for countries to effectively detect and respond to potential pandemics before they reach our shores.

As the United States looks to develop a new global system of pandemic prevention, there is absolutely no way to do that job without the World Health Organization. Uniquely, it puts traditional adversaries – like Russia and the United States, India and Pakistan, or Iran and Saudi Arabia – all around the same big table to take on global health challenges. It has relationships with the public health leaders of every nation, decades of experience in tackling viruses and diseases, and the ability to bring countries together to tackle big projects. This ability to bridge divides and work across borders cannot be torn down and recreated – not in today’s environment of major power competition – and so there is simply no way to build an effective international anti-pandemic infrastructure without the World Health Organization at the center.

### Case

### Inherency

#### Your solvency author’s proposal was *already* legislated in 2019 and will be implemented by December—oopsie! They’ll say the current directive only covers retribution but that’s 1 article in the larger directive – the full directive encompasses the aff

* Solved Uniformity- authors call it the “golden standard” of whistleblower law implementation for being extremely clear as it relates to Trade Secrets Directive
* Solved Whistleblowing- does the plan and more—compensation for damages, no liability, legal support, flips burden of proof to plaintiff. Plan only flips the burden of proof.

**Van Waeyenberge and Davies 2021** (Arnaud Van Waeyenberge, Associate Professor of Law at HEC Paris where he teaches EU Law, Global Law and Legal Reasoning. Prior to joining the HEC faculty, he was an attorney-at-law at the Brussels Bar (Clifford Chance LLP) and a legal clerk at the Court of Justice of the European Union (General Court). He is currently the Chairman of the "Law and Tax Department". Holds a Master Degree in Law (UCL) in Legal Philosophy (European Academy of Legal Theory) in European Law (College of Europe) and a PhD in Law. and Zachariah Davies, a trainee with Judge Anthony Collins, 8th Chamber of the General Court. He previously was a Trainee at Ashurst in Brussels. He holds an LLM in EU Law from the Free University of Brussels. "The Whistleblower Protection Directive (2019/1937): A Satisfactory but Incomplete System." *European Journal of Risk Regulation* 12, no. 1 (2021): 236-244. footnote 41 inserted in brackets [])DR 21

On 23 October 2019, against the backdrop of numerous scandals involving whistleblowers, the EU enacted a directive protecting whistleblowers across the EU.8 The Whistleblower Protection Directive (the “Directive“) aims to establish common minimum standards of whistleblower protection in an effort to pull together the “fragmented” policies applied in different Member States and across different EU policy areas.9 The Directive sets ambitious legislative targets for EU Member States, who will have until 17 December 2021 to implement its provisions into national law.10

The following sections will focus on the text of the Directive itself, providing contextual elements, details and a brief critical analysis on its scope, its reporting procedures and the protective tools it introduces. The final section will then explore some of the practical considerations raised by the Directive regarding its relationship with national legislation and pre-existing EU legal instruments.

II. THE BROAD SCOPE OF APPLICATION OF THE WHISTLEBLOWER DIRECTIVE The main objective of the Directive is to ensure **improve**d application of EU law by providing adequate **protection for whistleblowers**. Worker protection is therefore not the primary objective. The scope of the Directive is in fact much broader, as discussed below, and increased protection is essentially a desirable means of improving the effectiveness of EU law.

The Directive was drafted following extensive evaluation, including numerous consultations,11 an external study assessing its repercussions as well as its quantitative and qualitative benefits, in addition to an impact analysis. These studies found that not only will this legislative project bringing about economic, societal and environmental benefits, but it will also have a wider positive effect on the fundamental rights of European citizens.12 In quantitative terms, the Commission estimates that revenue loss stemming from fraud and corruption affecting the EU budget is estimated at between €179 and €256 billion per year.13 The Directive was designed to help reduce that leakage.

Having established the context, this section will provide a brief overview of the main features of the scope of application of the Directive: its ratione materiae and ratione personae.

1. Ratione materiae In accordance with the principle of the attribution of competences, and according to Article 2 of the Directive, only “breaches of Union law” are covered by the Directive, specifically **breaches that fall within the** scope of the legislative acts set out in the Directive: pubic procurement; financial services, products and markets; the prevention of money laundering and terrorist financing; product safety; transport safety; environmental protection; radiation and nuclear safety; food and nutritional safety; animal health and welfare; public health; consumer protection; the protection of privacy and personal data; and the security of networks and information systems.14 Equally covered are breaches affecting the financial interests of the Union and those relating to internal market violations.15 In addition, **the extensive list of matters** encompassed by the Directive is non-exhaustive insofar as it provides for the **possibility for Member** **States to “extend protection** under national law as regards areas or acts not covered (by the list supra)”. 16

The notion of a breach is also defined broadly to include both acts and omissions that are either: (1) unlawful and fall within the areas listed in the previous paragraph; or (2) merely “defeat the object or the purpose” of the rules applicable to those areas.17

2. Ratione personae According to Article 4 of the Directive, protection is granted (only) to natural persons who have obtained information in a professional context, either in the private or public sector. Moreover, information obtained in the context of an employment-based relationship that has either ceased/concluded or has yet to begin, as well as during the recruitment process or in pre-contractual negotiations, is equally covered.18 The scope of the protection is therefore vast, covering workers, former employees or candidates; officials; the self-employed; volunteers; paid or unpaid trainees; shareholders; members of company managerial bodies, including non-executive members; and contractors, subcontractors and suppliers. The Directive goes further than most existing national legislation by extending the protective measures, if necessary, to natural persons connected to the reporting person. As such, Article 4(4) allows “facilitators” and third parties who are connected with the reporting person and who could suffer retaliation in a work-related context, such as colleagues or relatives, to benefit from protection.19

Legal entities can also indirectly benefit from the protections offered by the Directive if the reporting person owns, works for or is otherwise professionally connected with that legal person.20 The reasons explaining why protections were not extended to legal entities in their own right are unclear, as are the potential justifications for this approach. As a consequence, a non-governmental organisation (NGO) that is active in environmental protection and that discovers violations of EU environmental law would therefore not benefit from the protection offered by the Directive.

III. REPORTING PROCEDURES21 The protection granted by the Directive is subject to two cumulative conditions.22 On the one hand, the reporting person must demonstrate a reasonable belief that the information provided was not only true at the time of the reporting, but that it also fell within the scope of the Directive. On the other hand, the person must comply with the reporting procedures provided in the Directive. Additionally, it appears that anonymous reporting is only partially protected under Article 6(2). It is up to the Member States to decide whether private or public entities and competent authorities are required to accept and follow up on anonymous reports. However, as stated in Recital 34 of the Directive, “[P]ersons who anonymously reported or who made anonymous public disclosures falling within the scope of this Directive and meet its conditions should enjoy protection under this Directive if they are subsequently identified and suffer retaliation”.

The design of the reporting procedure was one of the main sticking points in the negotiations between the Council and Parliament. The former, supported by countries including France, Germany and Italy, wanted to adopt a strict three-tiered reporting procedure; first, to the organisation’s internal channels; then to designated authorities; and finally – should all else fail – to the public generally. The Parliament, supported by the MEP Virginie Rozière – the Directive’s rapporteur – advocated for a more flexible approach, allowing whistleblowers to make reports through any of these three channels from the outset.23

An intermediate position, in line with that of Transparency International France,24 was ultimately adopted. The text of the Directive opts for a reporting procedure that allows the whistleblower to make reports either through internal channels or to external agencies in the first instance. Accordingly, the Directive imposes obligations on all public and private legal entities to establish internal channels for employee reporting.25 Member States are also required to establish external reporting channels and to follow up on reports.26 Public disclosures are generally only permitted if a first report, whether internal or through an external agency, failed to elicit an appropriate response within three months.27 However, direct public disclosure is permitted in case of imminent and evident danger to the public interest, where there is a risk of retaliation or a low likelihood of effective handling of the report through the internal or external agency reporting **procedure**.28

IV. TOOLS OF PROTECTION At the heart of the Directive’s mechanism are a series of tools to **protect the whistleblower** and punish those who do not respect these protections.

1. Protective measures The toolbox offered by the new Directive includes the prohibition of retaliation, a system of compensation for damages, legal support and confidentiality.

Among the protections granted to whistleblowers, the adopted text prohibits any form of retaliation, including threats and attempts at retaliation, whether **direct** or **indirect**. A long and non-exhaustive list of examples is presented in Article 19.29 On reading this list, the European legislators’ intention to provide a definition of a “whistleblower” that covers all of its professional dimensions – in such a way as to protect them from all direct and indirect discrimination – is clearly evident. The European legislators have also reversed the burden of proof in retaliation proceedings, as the employer must now prove that the action taken against the whistleblower was not the consequence of their whistleblowing activities.30

In complement to the prohibition against retaliation, the Directive obliges Member States to protect reporting persons against reprisals. Whistleblowers are protected from civil and criminal liability so long as they had reasonable grounds to believe that their disclosure was necessary to reveal a relevant infringement.31

Moreover, the Directive requires full compensation **for damages suffered** by the **whistleblower**, as determined by and in accordance with national law.32

According to Article 20, Member **States are** also required to implement measures in support of whistleblowers, providing access to **free and independent** information and **advice**, effective assistance from the authorities and legal assistance in criminal or civil proceedings. In addition, Member States have the possibility to provide financial assistance and psychological support.

The adopted text also guarantees the confidentiality of any person subject to proceedings as long as the investigation is ongoing, as well as the right to an effective remedy.33

Evidence from the US experience in designing whistleblower laws suggests that measures strengthening whistleblower protections have a lesser influence on rates of disclosure than measures that increase the likelihood of a financial award for disclosures leading to successful prosecution.34 Intuitively, one might be concerned that financial incentives could raise the risk and costs associated with false reports. However, the evidential support for this position appears to be quite limited.35 The silence of the text of the Directive on this issue therefore seems to be a missed opportunity.

2. Sanctions The Directive requires Member States to implement effective, proportionate and dissuasive penalties applicable to natural and legal persons in the event of: obstruction or the attempted obstruction of reporting; retaliation and vexatious proceedings against whistleblowers; as well as breaches of the duty to maintain the confidentiality of the identity of reporting persons.36

The Directive also provides for effective, proportionate and dissuasive sanctions against persons knowingly making false reports or false public disclosures, as well as compensation measures in accordance with national law.37

It should be noted that the original text proposed by the Commission included a specific penalty for malicious or abusive reports. Nevertheless, in line with the Rapporteur’s position, this particular sanction was removed from the final draft of the Directive without being replaced. As a result, in case of abusive reporting, existing national laws on slander and defamation may apply.

The approach to sanctions under the Directive can be criticised in at least two ways. Foremost, not all obligations under the Directive are in fact subject to sanctions. For instance, certain NGOs criticise the Directive for the lack of sanctions against failures to implement internal reporting procedures, failures to follow up on reports and failures to inform whistleblowers of the steps taken following a report.38

Moreover, for those breaches that are covered by the provisions of the Directive, the text of the instrument provides no detail on the nature of the sanctions Member States should apply. It is open to legislators implementing the Directive to choose between sanctions of a civil, criminal or disciplinary nature.

It is particularly regrettable that the Commission has not been able to build in a more complete definition of the types of sanctions Member States should impose against breaches of key provisions of the Directive. The considerable margin of appreciation left to Member States in determining the nature of sanctions is likely to lead to a highly fragmented approach across the EU. This is particularly so given the very different conceptions of whistleblowing in the legal cultures of different Member States. Whilst Member States are bound by the requirement to implement “effective and proportionate“ sanctions, uncertainty as to the precise requirements of this obligation and the corresponding risk of weak sanctions may undermine the objectives of the Directive, leading to or maintaining a chilling effect in certain Member States.

V. RECONCILIATION WITH OTHER EU LEGAL TEXTS AND MEMBER STATES’ LAWS The Directive prescribes a two-year implementation period, within which Member States will be required to give effect to its provisions in their respective national legal systems. On account of the EU rules on competence, the provisions of the Directive apply exclusively to disclosures relating to breaches of EU law. However, the Directive quite clearly invites Member States to implement similar measures in relation to breaches of national law.39

The “harmonious” application of the provisions, in such a way as it would encompass breaches of both EU and national law, as well as other forms of harm, is clearly the “gold standard” in terms of implementation. A single comprehensive system would provide a number of benefits, not least in terms of clarity of the rules applicable to whistleblowers and the protections they may hope to benefit from. In practice, fine distinctions between areas of EU and national competence may not be obvious to the layperson, or indeed to untrained advisors. This uncertainty may also have a chilling effect on disclosures, leading to the possibility of undermining the goals of the Directive.

For those Member States that do not currently have a standalone whistleblower protection regime in place, the Directive offers a solid framework around which a single comprehensive regime could be built. Arguably, this process may be less onerous than one that attempts to amend existing legislation in a manner that conforms to the provisions of the Directive.

In Member States that currently operate whistleblower regimes, the reconciliation between the national and European systems is not straightforward. National legislation will have to be amended to avoid a double standard between national and European systems.

The Directive must also be considered in the context of other relevant EU legislation. The Trade Secrets Directive is particularly relevant in this regard, as it aims to protect businesses against the theft or disclosure of their information by requiring Member States **to impose sanctions on persons unlawfully disclosing trade secrets**.40 Whilst **the** Trade Secrets Directive includes certain exceptions, these have previously been criticised for their lack of clarity, **which could potentially be harmful to**, or at the very least discourage, a whistleblower.41 [41 Cobbaut, supra, note 5, 74. **For an analysis of the issue** of tensions between whistleblower protection and trade secrets prior to the existence of the Directive, see V Abazi, “Trade Secrets and Whistleblower Protection in the European Union” (2016) 3 European Papers 1061.] The Directive thereby seeks to address this issue by clarifying that **a report that meets the** requirements contained in the **Directive** can benefit from the exclusion contained in Article 3(2) of the Trade Secrets Directive, which permits disclosure if “required or allowed by Union or national law”. Therefore, defendants will need to establish that their disclosure fell within the scope of the Directive and complied with the reporting procedure prescribed therein, in order to avail themselves of this defence. In other words, the Directive allows for “a rebalancing between secrecy, security and freedom of information” in favour of the reporting person.42

#### The only AC card after 2019 says that directive solves public health

1AC Dreyfus and Galizzi 20 — (Suelette Dreyfus, PhD, Researcher at the University of Melbourne, and Bruno Galizzi, part of the Blueprint for Free Speech Spain, “Protect whistleblowers, protect everyone's health”, 5-19-20, Blueprint for Free Speech, Available Online at <https://www.blueprintforfreespeech.net/en/news/protect-whistleblowers-protect-everyones-health>, accessed 9-8-21, HKR-AM)

In a bitter irony, Spain is one of the countries hardest hit by the coronavirus and, at the same time, one of the few countries in the European Union that does not have a national law to protect whistleblowers.

Now is the time to change that. The transposition of the European Directive 2019/1937 is an opportunity to incorporate legal provisions at the national level, and promote a cultural change to provide citizens with mechanisms for active participation in the protection of the public interest.

Last February, when the world was yet another, Blueprint for Free Speech, together with the National Commission of Markets and Competition, organized a public event bringing together spokespersons and representatives of political parties precisely to discuss this matter. That event was the first time that a wide and diverse party table (Ciudadanos, Esquerra Republicana, Partido Popular, Unidas Podemos, Vox) sat publicly in Madrid to discuss protection of whistleblowers.

Different positions were heard, some of them distant from what was established by the aforementioned European Directive, but all recognized the complete need to protect alerters in an integral way. Civil society was once again ahead of the interests of legislators proposing various alternatives that were waiting to be debated, one of them currently on the Table of Congress.

In this period of de-escalation and transition to the "new normal" one cannot look the other way. The iron and urgent commitment must be doubled to protect the whistleblowers, who have demonstrated to promote a more just and democratic operation of the institutions, in defense of our fundamental and human rights.

#### They’ll say their Vanderkerchhove evidence says the directive doesn’t solve

#### It does put the burden of proof on the plaintiff – that’s a line in NC Davies

#### Abazi vacuously references protection – we cite like 15 from the bill

### Adv 1

#### 1] Whistleblowing fails- Dreyfus is about Chinese whistleblowers like Dr. Li Wenliang – they didn’t stop COVID from spreading in the West. Governments fail to act even if they have good information—Delta wave currently proves

#### 2] EU whistleblowers are ignored 90% of the time

**Albon 20** (Victoria, writer for Dentons-- the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work. “Report reveals 20% of COVID-19 whistleblowers dismissed” <https://www.lexology.com/library/detail.aspx?g=f3a952a0-c7a6-4bb7-b769-b505c9f53f77> November 12, 2020)DR 21

On 2 November the whistleblowing charity, Protect, published a report on the treatment of COVID-19 whistleblowers. The report is based on 638 COVID-19-related cases about which the charity’s advice line was contacted. It revealed that, of those 638 cases, 20% of employees who raised concerns about either COVID-19 safety measures in their workplace or fraud in relation to the furlough scheme were dismissed.

The report also stated that 41% of the employees who raised such concerns were simply ignored by their employers. Where concerns were raised by key workers in the health and care sectors, just 10% of those whistleblowing concerns were investigated.

#### 3] 197 other countries thump - EU preparedness isn’t key to stop a global pandemic- they imported vaccines

#### 4] Only internal is about increased funding— EU just dumped 5.3 billion Euros into disease preparedness

**European Commission ND** (The people who run Europe. “EU4Health 2021-2027 – a vision for a healthier European Union” <https://ec.europa.eu/health/funding/eu4health_en> no date but it’s about a 2021-2027 program)DR 21

\*\*\*NOTE: €5.3 billion = $6.26 billion\*\*\*

EU4Health 2021-2027 – a vision for a healthier European Union

EU4Health is the EU’s ambitious response to COVID-19. The pandemic has a major impact on patients, medical and healthcare staff, and health systems in Europe. **The new EU4Health programme will go beyond crisis response to address healthcare systems’ resilience.**

EU4Health, established by [Regulation (EU) 2021/522](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2021.107.01.0001.01.ENG), will provide funding to eligible entities, health organisations and NGOs from EU countries, or non-EU countries associated to the programme.

Areas of action

With EU4Health, **the EU will invest** €5.3 billion in current prices in actions with an EU added value, complementing EU countries’ policies and pursuing one or several of EU4Health´s objectives:

**The 10 specific objectives** under the 4 general goals are:

To improve and foster health in the Union

disease prevention & health promotion

international health initiatives & cooperation

**To tackle cross-border health threats**

prevention, preparedness & response to cross-border health threats

complementing national stockpiling of essential crisis-relevant products

establishing a reserve of medical, healthcare & support staff

To improve medicinal products, medical devices and crisis-relevant products

making medicinal products, medical devices and crisis-relevant products available and affordable

**To strengthen health systems, their resilience and resource efficiency**

strengthening health data, digital tools & services, digital transformation of healthcare

**improving access to healthcare**

developing and implementing EU health legislation and evidence-based decision making

integrated work among national health systems

EU4Health will pave the way to a [European Health Union](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/european-health-union_en) by investing in urgent health priorities:

the [response to the COVID-19 crisis](https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/public-health_en) and reinforcing the EU’s resilience for [cross-border health threats](https://ec.europa.eu/health/security/overview_en)

[Europe’s Beating Cancer Plan](https://ec.europa.eu/health/non_communicable_diseases/cancer_en), and

the [Pharmaceutical Strategy](https://ec.europa.eu/health/human-use/strategy_en) for Europe

Other areas, such as health systems’ [digitalisation](https://ec.europa.eu/health/ehealth/home_en), reducing **the number** of [antimicrobial-resistant infections](https://ec.europa.eu/health/antimicrobial-resistance/eu-action-on-antimicrobial-resistance_en)**and** improving [vaccination](https://ec.europa.eu/health/vaccination/overview_en) rates **will also be boosted.**

### Adv 2

#### 1] Junge is about overall trade descrepancies – whistleblowers aren’t key—border laws and foreign litigation cause disharmony

1AC Junge 16 — (Fabian Junge, Law @ Maastricht University, “THE NECESSITY OF EUROPEAN HARMONIZATION IN THE AREA OF TRADE SECRETS”, MAASTRICHT EUROPEAN PRIVATE LAW INSTITUTE WORKING PAPER No. 2016/04, Available Online at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2839693,)DR> 21

If the misappropriator is solely residing in a third country, the issue of the applicable law will be dealt with on the basis of national law, because it falls outside the scope of the Brussels I Regulation95. Therefore, trade secret holders only have access to judicial protection or can enforce foreign judgments, if domestic law allows it. **The conditions for** access as well as for recognition and enforcement of third country judgments differ greatly between the **Member States**.96 In principle, goods produced by the misappropriator in a Member State or third country not providing trade secret protection for the legitimate trade secret holder could be freely sold on the internal market.

Difficulties with both cross-border litigation and domestic litigation on trade secrets are supported by the fact that, while only a limited number of domestic cases have been reported, cross-border case law appears to be completely absent. Reminiscing the number of companies being the target of misappropriation, or attempts to misappropriate, their reluctance to bring an action is **certainly** worrisome **with respect to the EU’s and its Member States’ capacity for an effective enforcement mechanism**.97

#### 2] Econ impact is a joke- global economic collapse and EU economy tanked to zero in in 2021--- didn’t cause a single war.

#### 3] EU isn’t key to the global economy- China and the US grew during Eurozone crisis

#### 4] Decline inevitable- Delta is crushing the European economy

**Matsuo et al. 08/24/2021** (YOHEI MATSUO, TATSUYA GOTO and RINTARO HOSOKAWA, Nikkei staff writers. “COVID-19 casts shadow over US and European economic optimism” <https://asia.nikkei.com/Spotlight/Datawatch/COVID-19-casts-shadow-over-US-and-European-economic-optimism> August 24, 2021)DR 21

Even in Europe, however, the **delta** variant is casting shadows over its economic outlook. The economic sentiment indicator, compiled by Germany's Center for European Economic Research (ZEW), came to 40.4 in August, down 22.9 points in the third consecutive month-to-month **fall**.

Christine **Lagarde**, president of the European Central Bank, warned that the delta variant "could slow down" the recovery in services, "especially in tourism and hospitality."

The delta variant is also on a rampage in Asia, throwing factories and ports into turmoil. Toyota Motor will slash global production for September by 40% from its previous plan as the spread of infections in Southeast Asia adds to supply troubles for the biggest Japanese carmaker. China has shut down a key terminal for container ships.

If the chaotic situation drags on, **price rises resulting from supply-side troubles may add to concern** about the outlook for consumption in the U.S. and Europe.

The workability of U.S. and European strategies to achieve economic recovery and contain coronavirus infections at the same time is being tested.

#### 5] Warrant in the Wright 12 card is: Political instability inside Middle Eastern countries is likely to bring with it great geopolitical risks ----Taliban taking over Afghanistan thumps

#### 6] No impact to economic decline---countries respond with cooperation not conflict.

Christopher Clary 15. PhD in Political Science, MIT; Postdoctoral Fellow, Brown’s Watson Institute for International and Public Affairs. “Economic Stress and International Cooperation: Evidence from International Rivalries.” *MIT Political Science Department*. Research Paper 8: 4.

Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced

with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice.