



Abstract

New challenges for high innovative companies: data protection, trade secrets and cyber-security

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The year 2018 will entail profound changes for companies with high innovative potential which operate globally, particularly for SMEs.

This is due to several reasons. First of all, by May 2018, European companies will have to adapt to the new requirements introduced by the EU Regulation 679/2016 (better known as General Data Protection Regulation - GDPR) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. This will imply the need to elaborate tools regarding data processing, implementation of data exchange strategies (in particular where data exchange occurs with third countries) as well as data retention in non-proprietary online archives. At the same time, non-EU companies that conduct business with EU companies will have to take these obligations into account if they want to maintain relationships with such EU companies.

By June 2018 the EU Directive 2016/943 on Trade Secrets will oblige EU Member States to harmonize national laws and implement internal regulations aimed at the protection of industrial secrets, particularly in relation to the acquisition, use and disclosure of the same. It has to be noted that the EU Directive 2016/943 was adopted in 2016 on the same period of time of the approval of the Defence Trade Secret Act in the United States, demonstrating the awareness on business secrets' importance at international level.

Data protection through the above mentioned Regulation and Directive should be seen in the overall context of the EU project called Europe 2020, which aims to encourage companies to invest in innovation, providing them with the tools necessary to protect ideas and innovations, based on the

assumption that such ideas and innovations are incorporated, in most cases, into confidential and secret electronic data.

If the compliance required by the aforementioned legislative instruments will be managed strategically by companies that operate globally – hence also those that intend to maintain partnership relations with European and/or US companies – such undertakings may push companies to create and implement protocols and internal procedures in order to strategically manage the data and, where the relevant conditions are met, protect them as trade secrets and intellectual property rights, as well as enhancing them from an economic point of view. In such respect, companies will be called upon to act on three fronts: on the one hand, implementing their organizational models and identifying managerial figures in charge with the data management and trade secret protection, on the other hand by studying and adopting contractual models of non-disclosure in connection to business relationships with third parties and, finally, adapting its technological data protection infrastructures (i.e. cyber security). In fact, recent data¹ have shown that industrial secrecy is one of the main targets of cyber-attacks and it has been estimated that in recent years such illicit attacks, as well as attacks related to other intellectual property rights, have seen an increase of around 60%.

Only by means of a virtuous interaction between the above outlined aspects, innovative companies will be able to successfully meet the challenges of the future.

Finally, this implementation could also be a useful tool for innovative companies in order to get easily access to tax concessions instruments, such as the so-called “Patent Box”, already applied in many EU countries under the OECD Guidelines. Indeed, such tax concessions might be more and more usual with a view to enhancing companies’ intellectual property rights, and will reward SMEs that have a correct management and traceability – also by means of computer management systems – of electronic data and confidential information related to research and development activities.

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He is registered as European and Italian Trade Mark & Design Attorney since 2005. He matured considerable expertise in assisting companies (in particular, SMEs) and associations operating internationally in the technology sector.

He cooperates as an expert with WIPO, EUIPO and the European Commission, as well as with the EU-China and the EU-Asean IPR SME Helpdesks. He is a frequent lecturer for several Italian Universities and speaker during international conferences and seminars, as well as author of numerous publications and articles on international magazines and reviews.

¹ Klahr et al., Cyber Security Breaches Survey 2016, at 1 (May 2016), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521465/Cyber_Security_Breaches_Survey_2016_main_report_FINAL.pdf