



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

*25<sup>th</sup> of January 2018*

2018 is going to be a year of relevant changes for companies operating in the European Union as new legislative measures on data protection and trade secrets will enter into force. The 53<sup>rd</sup> session of the INSMEAcademy was focused on these themes and took advantage of the expertise of INSME Board Member Mr. Elio De Tullio, managing partner of IP firm De Tullio & Partners, who shared relevant information and insights on what the new legislative framework will entail for companies.

The newly adopted EU **General Data Protection – GDPR (679/2016)** on the protection of natural persons with regard to the processing of personal data and on the free movement of such data was introduced by the speaker who highlighted its main changes: as stated in the Article 3 the Regulation will have a new territorial extension, meaning that it will impact on European companies as well as on the ones based outside the European Union that offer goods and services in the EU. The GDPR also foresees a strengthening of the conditions for consent to the use of personal data that must be expressed in an intelligible and easily accessible form (Art. 7). According to the new regulation, companies will have to comply with new rules and adopt some changes in the management of personal data in the near future. Data processors will be submitted to specific obligations, including the implementation of high security standards, ensuring adequate record-keeping and informing the data controller of any breach. Furthermore the GDPR foresees the new business figure of the Data Protection Officer: a Data Manager in charge of ensuring an adequate use of personal data by companies, who in some circumstances will have to be designated by the data controller or processor and will be mandatory for public authorities only.

Mr. De Tullio also highlighted the importance of data, both personal and not personal (i.e. commercial or business information). Personal data are protected and regulated by Privacy law, but they can also become relevant in relation with trade secret protection. An example is offered by lists of clients and distributors that can include personal data – as address, date of birth, etc. – but also customers’ preferences. In this case, the measures those companies adopt to such databases are also important in relation to trade secrets protection in particular as they can be useful during a lawsuit to persuade the judge to protect the database as a trade secret.

In this framework **cyber security** becomes a major issue since recent data have shown that an increasing number of cyber-attacks is related to intellectual property. Authors of such attacks usually seize companies' data and documents and asked to be paid to receive back the data. Here innovation plays a fundamental role, because as stated by the speaker nowadays every innovation arises with a data, which is usually an electronic data stored in a PC or in another electronic device. This is an additional reason to adopt and implement cyber security measures that include the identification and control access to data (i.e. by using a log-in system), the protection of computers and network (i.e. by blocking dangerous websites or installing firewalls), the restriction or prohibition of data storage and distribution (i.e. by limiting the use of USB or other memory devices).

The presentation continued with a focus on the **EU Directive 2016/943 on trade secrets protection** that will be implemented in June 2018. The importance of trade secrets is proven by the fact that on the same time period both the EU and the US adopted actions to enhance the level of trade secret protection because there have been many cases of misappropriation of trade secrets in the last years. The EU Directive aims at:

- Providing a consistent definition of "trade secret" and how it can be protected
- Setting out the remedies to be adopted in case of misuse of a trade secret
- Ensuring that national courts can prevent disclosure of trade secrets during legal proceedings.

Furthermore the Directive will guarantee a minimum level of protection of trade secret as well as a common set of principles, definitions, procedures, safeguards and remedies that must be applied across the EU.

Mr. De Tullio stated that it is crucial for companies to understand the importance of data for any activity that includes competition, innovation and security. Privacy compliance, that according to the Directive can be a burden and a cost for companies, can also be a competitive advantage in terms of trade secrets protection and increase of the level of cyber security.

The implementation of data protection requirements could also be a useful tool for innovative companies in order to easily access tax concession instruments or other financial instruments provided by the EU legislation.

Both the GDPR and the Directive on Trade Secrets have been analysed in the framework of the Europe 2020 strategy and in connection with Industry 4.0 programs.

With regard to the first one, the Speaker put the attention on the Horizon 2020 Programme, the biggest EU Research and Innovation programme as well as the financial instrument implementing the Innovation Union, a Europe 2020 flagship initiative aimed at securing Europe's global competitiveness. In this framework worthy of special mentions is the SME Instrument Horizon 2020 providing for a full-cycle business innovation support. The SME Instrument evaluators consider IPR a very important part of proposals and within the processing they give high scores to companies that included in the proposal a right IP assessment, that can be a possible model of protection and exploitation of intellectual property rights. It is crucial to implement new companies model to protect trade secrets in order to

guarantee a higher security and increase the level of the architectural organization in terms of cyber security infrastructures within the same company.

Industry 4.0 programmes are designed to provide financial incentives even in order to higher the level of digitalization and cyber security of companies. A part of financial incentives includes tax credits to those companies that prove a link between R&D and exploitation. This was one of the issue of the 'Patent Box' introduced in many countries - among which Italy - under the OECD guidelines. This tool adopts a different tax regime for those revenues arising from IPRs, creative works and information, process and formula related to industrial, commercial or scientific matters, which can be protected according to the law. The patent box allows high innovative companies to receive tax benefits in case they are able to support the evidence that exploitation of IPRs as well as to show a connection of man/days in terms of R&D.

By concluding Mr. De Tullio underlined that the new requirements will represent an opportunity for companies to improve their competitiveness which will be called upon three fronts:

- Implementation of their organizational model by identifying managerial figures in charge of data management and trade secret protection
- Study and adoption of contractual models of non-disclosure in connection to business relationships with third parties
- Adoption of technological data protection infrastructures (i.e. cyber security).

Innovative companies will be able to successfully manage future challenges if they will integrate all the aspects included in the new legislative framework.