



Trade secret protection in the digital age

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Outline

- The enhanced role of Trade Secrecy in the digital age
- The urgency to fill the traditional IP «Limits and gaps»
- The need to contribute to the TRIPS Framework
- Versus an EU harmonized Legal Environment
- Conclusions

The enhanced role of Trade Secrecy in the digital age

- ➔ Thanks to the impressive reduction of transaction costs that the Internet has made possible, new forms of cooperation with open science and open innovation are likely to be promoted, possibly leading to new business models for using co-created knowledge

- ➔ The contribution to intra- and inter-sectorial cooperation:
 - a) in traditional off-line contexts
 - b) in sectors that, although conventionally separated, are shortening the distance thanks to the net
 - c) in specific digital environments

The legal *status quo*

➔ Few legislations provide for a clear legal environment

➔ No common definition of what a trade secret is (i.e.: Germany, Finland, Greece, Denmark, Spain)

➔ No common rules concerning the ambit and scope of protection

➔ The legal fragmentation as a “key obstacle to using the EU single market as an enabler of innovation and economic growth”

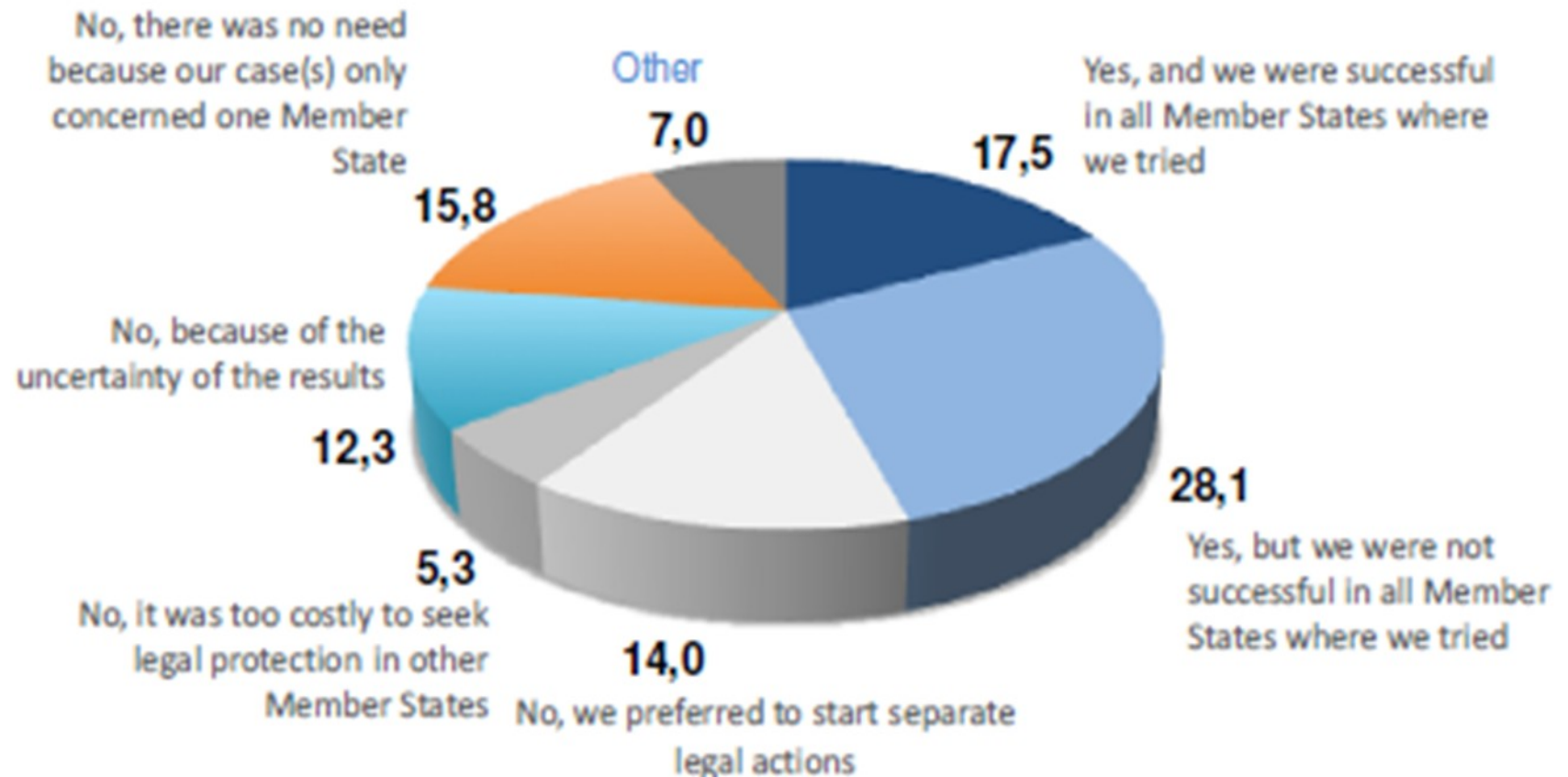
Some economics

→ «One in five companies has suffered at least one attempt to steal its trade secrets in the last ten years”

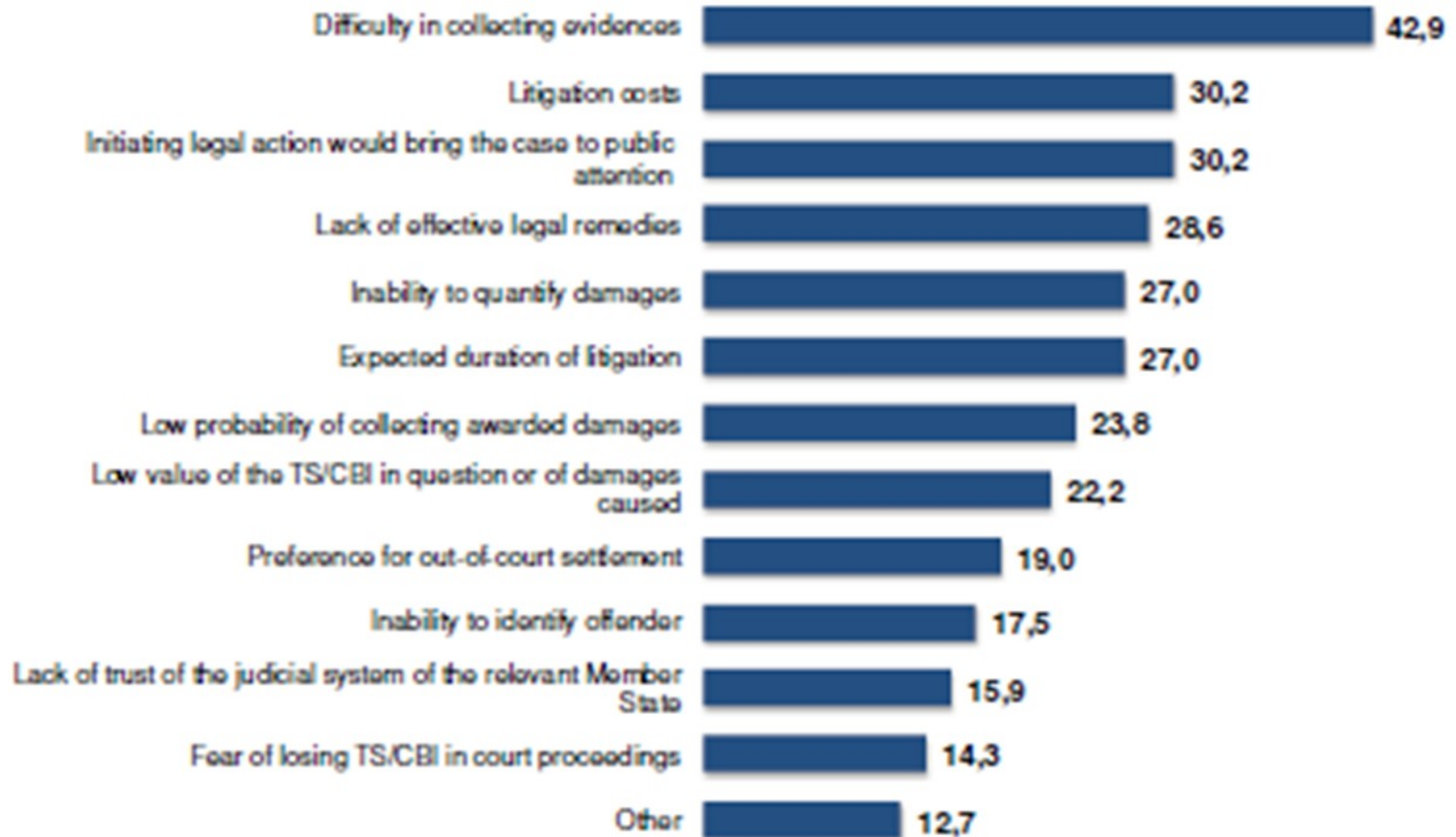
→ “The numbers are going up with 25% of companies reporting theft of information in 2013, up from 18% in 2012”

→ According to the 2013 EU Study, effective and equivalent protection across Europe is highly demanded (70%)

In case of litigation within the EU, if your company obtained an order from a national court to stop the use of misappropriated TS/CBI in the territory of that Member State, has your company tried to enforce this order in other Member States?



When your company decided not to seek legal remedies against misappropriation in the EU, what were the reasons?



The urgency to fill the traditional IP «Limits and gaps»



The mobile definition



A possible cost-free protection



No disclosure requirement



A potentially perpetual protection

The need to contribute to the TRIPS Framework

- In principle, WTO Members are bound by Art. 39 of the TRIPS Agreement
- De facto, different approaches to a single provision
- Looking for a sound EU solution to create «an innovation-friendly environment”
- Alignment with Japan and US as civil (not criminal) law
- Contribution to the International framework in order to establish similar legislation

Versus an EU harmonized Legal Environment

Commission proposes rules to help protect against the theft of confidential business information with Directive 2013/0402

- Common legal grounds and level playing field
- Legal benefits at cross-border level
- Common rules for calculating damages
- R&D investments
- Uniform and harmonized know-how policy

Possible drawbacks

- Definition: Confidential business information as such?
- Conducts amounting to legal or infringing conducts
- No reconciliation with Directive enforcement 2004/48/CE
- Which relations between different procedural measures?
- How the new Reg. affects the balance clauses provided by patent protection?
- Which sanctions against legal entities?
- Is there a forum shopping risk?



Thank you for the attention

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