



Laga Newsflash

New measures to protect know-how and trade secrets must be incorporated into national law on 9 June 2018

Whether at national or European level, the concepts and protection mechanisms of know-how and trade secrets are diverse and governed by different rules. This makes it very difficult for companies to ensure legal protection for these intangible assets. As of 9 June 2018, all EU Member States should implement harmonised rules, bringing a consistent approach, interpretation and enforcement mechanism. The Directive however, does not create a new intellectual property right. The new legislation will specifically help companies that own commercially valuable intangibles that do not qualify as intellectual property rights.

On 8 June 2016, EU legislators adopted Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016, on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure ("**Trade Secret Directive**"). The aim of the Directive is to tackle the major differences existing between national legislations and ensure harmonisation. The Directive must be incorporated into national law on 9 June 2018, and provides for a minimum level of harmonisation. Member States may therefore implement stricter rules.

What are the principles of the Directive?

a) Harmonised definition of "trade secret"

Firstly, the Trade Secret Directive contains a **harmonised definition** of the term “trade secret”. Article 2 defines trade secrets as information which meets all of the following requirements:

- It is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question
- It has commercial value because it is secret
- It has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret

b) Protection of trade secrets against unlawful acquisition, use or disclosure

The Directive provides for the **prohibition** to unlawfully acquire, use or disclose trade secrets and the right to take **legal actions** against third parties in that respect. Those actions include civil law remedies such as damages, injunctions and the recall of infringing goods from the market. The Directive also requires that these **actions are dismissed** in certain cases (e.g. when exercising the right to freedom of expression, to protect whistleblowers, etc.). Finally, the Directive also ensures the **preservation of confidentiality** for trade secrets during the course of legal proceedings, and after they have ended.

Belgian Law

Currently, Belgium does **not have specific laws** for trade secrets, but provide limited protection **through different stand-alone provisions** (criminal code, employment contracts act, etc.). These provisions do not meet the minimum standards provided by the Directive.

On 19 January 2018, the Belgian Council of Ministers approved a **draft bill implementing the Trade Secret Directive**. The draft bill provides **provisional and protective measures, judicial orders, and remedial measures**. The draft bill also contains a **limitation period**. Additionally, judges will also have the possibility to order the **cessation** of an impending acquisition of trade secrets, and all trade secret claims will be **centralised in the commercial courts**, regardless of the amount claimed and the parties’ capacity. Lastly, the draft bill foresees **confidentiality principles in legal proceedings** and stipulates sanctions for non-compliance with these provisions, such as judicial fines and penalty payments.

As of yet, the draft bill has **not been adopted** by the Belgian Chamber of Representatives. It is likely that this will still happen **before the summer**.

Laga will provide updates on any future developments and is readily available to respond to any questions on this topic.

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