

# TRADE SECRETS LITIGATION TRENDS IN THE EU



## TRADE SECRETS LITIGATION TRENDS IN THE EU IPR ENFORCEMENT CASE-LAW COLLECTION

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## Foreword

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This report is produced in accordance with Article 18 of 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.

## Acknowledgements

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## Executive Summary

Directive (EU) 2016/943 ('the Trade Secrets Directive') is intended to harmonise trade secrets law across the European Union. The present report ('this report') presents an analysis of trade secrets litigation trends in the EU, in accordance with the reporting requirement of Article 18 of the Directive. The analysis within covers litigation between 1 January 2017 and 31 October 2022, and complements the *Baseline of Trade Secrets Litigation in the EU Member States*, published in 2018 ('the 2018 Baseline Report'). As the period of analysis covers the Directive's implementation deadline of 9 June 2018, the analysis occurs in a discontinuous legal environment. The trends identified should therefore be interpreted as a 'macro' view of trade secrets litigation, and care should be taken when drawing general inferences about the substantive impact of the Directive. This report consists of three components: a quantitative analysis, a qualitative analysis, and a collection of case summaries.

The quantitative analysis is based on statistical trends observed in approximately 700 judgements in the study period. It finds that trade secrets litigation diverges significantly across Member States in terms of case volumes and legal fora. European trade secrets litigation tends to be highly localised at the national level, with cross-border disputes remaining relatively rare. Disputes over trade secrets tend to be concentrated between employers and (former) employees; disputes with third-party businesses tend to be relatively less common. Unfair competition law also continues to be commonly used as a complementary field of law to enforce against actions where trade secrets rights are invoked. The analysis also reveals that, although the economic literature tends to focus on the role trade secrets play in technical innovation, trade secrets law tends more often to concern litigation over commercial information rather than technical information. While manufacturing is the sector most often implicated in litigation proceedings, the commercial sectors implicated specifically in litigation over commercial information are very diverse. This confirms the important role that trade secrets play in all sectors of the economy, particularly where commercial information is involved.

The qualitative analysis provides a theoretical discussion on the interpretation of the definition of trade secrets, unlawful acts, the measures granted under the Directive, and the principle of proportionality. Three main trends are identified in this analysis. First, significant developments are noted in the interpretation of the 'reasonable steps' requirement for the definition of 'trade secret' under Article 2(1) of the Directive. These developments suggest that the requirement is to be

understood as flexible and context-specific, based on the value of a trade secret, as well as the size and business sector of the trade secret holder. This indicates that the harmonisation of trade secrets law is occurring in a way that effectively meets the needs of SMEs, as these undertakings are by definition diverse in their nature, size, and capacities.

Second, litigation trends suggest that, for information to be protected under trade secrets law through contractual measures such as confidentiality agreements, it is crucial for the specific objects of protection to be clearly identified. This is an important finding, as it has direct implications for companies' standard contractual practices, in particular between employers and employees. Third, the issue of procedural measures for preserving the confidentiality of trade secrets during litigation must be given due attention. Despite provisions for such measures under Article 9 of the Directive, the litigation strategies of trade secret holders appear to be framed by a trade-off between the specificity of filed claims (and therefore the likelihood of the acceptance of such claims before the court), and the risks of unintentional secrecy-destroying disclosures. This issue was previously identified as a hurdle to litigation in the 2018 Baseline Report and continues to be a key issue for the successful harmonisation of trade secrets law.

This report identifies other issues that should be continuously monitored in the case-law, as they have important implications for the impact that the Directive will have on Member States. One such issue is the relationship between the 'secrecy' and 'commercial value' requirements for protection in the context of 'big data', as such developments may clarify the potential role of trade secrets law in the data economy. Developments regarding methodologies for calculating damages, and the standard of negligence or constructive knowledge for third-party infringers, will also bring increased legal certainty. Case-law developments should also be monitored for interpretations of the definition of 'infringing goods' that 'significantly benefit' from trade secret misappropriations (as per Article 2(4) of the Directive), as the scope of these interpretations may determine the boundaries of trade secrets liability throughout supply chains.

Obviously, trade secrets protection is a particularly nuanced legal area, which is designed to cover a wide range of subject matter and is highly context-specific in its application. The challenge is therefore to find a balance between the legal certainties of harmonisation and the flexibilities needed to deal appropriately with the subject matter within the diversity of business sectors and legal systems that exist across Member States. As trade secrets litigation trends are still developing, and the Court of Justice of the European Union has not yet had the opportunity to clarify key provisions

of the Directive, it will take some time for the jurisprudence of Member States to evolve in order to achieve true harmonisation within the boundaries of the subject matter's inherent complexity.

# Overview of the Study

## 1 Introduction

Directive (EU) 2016/943 (the ‘Trade Secrets Directive’) was adopted in June 2016<sup>(1)</sup> to provide for harmonised ‘procedures and remedies intended to protect trade secrets ... to meet the objective of a smooth-functioning internal market for research and innovation, in particular by deterring the unlawful acquisition, use and disclosure of a trade secret ...’<sup>(2)</sup>. In accordance with Article 19, Member States were required to transpose the Directive into national law by 9 June 2018. Concerning reports, Article 18(1) of the Directive requires the following:

By 9 June 2021, the European Union Intellectual Property Office, in the context of the activities of the European Observatory on Infringements of Intellectual Property Rights, shall prepare an initial report on the litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets pursuant to the application of this Directive.

In 2018, the European Union Intellectual Property Office (EUIPO) published a study titled *The Baseline of Trade Secrets Litigation in the EU Member States* (‘the 2018 Baseline Report’), commissioned by the EUIPO’s European Observatory on Infringements of Intellectual Property Rights<sup>(3)</sup>. That report analysed the legal systems of the (then) 28 Member States of the EU as they relate to trade secrets protection and litigation proceedings. Furthermore, the report provides a baseline for the ‘initial report’ required by Article 18(1) of the Directive.

The 2018 Baseline Report provides a general overview of trade secrets litigation procedures, as well as key insights into the challenges faced by trade secret holders in the litigation process, particularly in the pre-Directive period. This provides a background context for the present report, which focuses on trends in trade secrets litigation during the period in which the Directive was implemented by

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<sup>(1)</sup> 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 (Text with EEA relevance), OJ C 226, 16/7/2014, p. 48.

<sup>(2)</sup> Recital 21, Trade Secret Directive.

<sup>(3)</sup> *The Baseline of Trade Secrets Litigation in the EU*, European Union Intellectual Property Office, 2018; ISBN 978-92-9156-251-0 doi: 10.2814/19869 TB-04-18-230-EN-N.

Member States. Together, these two reports provide the basis for future analysis of the application and impact of the Directive.

This report constitutes the ‘initial report on the litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets’ referred to in Article 18(1) of the Directive. It is divided into three parts: Part I presents a quantitative analysis of trade secrets litigation trends in the EU; Part II presents a qualitative analysis of trade secrets litigation trends as they relate to key legal provisions of the Trade Secrets Directive; and Part III presents a case-law collection in the form of summaries of key cases that help in understanding the dynamics and trends in trade secrets litigation in Member States.

## 2 Methodology

A quantitative analysis of trade secrets litigation trends requires the collection of data on trade secrets litigation in each Member State of the EU. In order to collect this data, National Correspondents, who are all professionals with expertise in intellectual property law and their respective national legislation, were identified in Member States<sup>(4)</sup>. Correspondents were then charged with the following tasks: (1) collecting all judgements involving trade secrets litigation under applicable national laws; (2) sorting the judgements to filter out all cases that do not meet the criteria for relevance; and (3) reading each judgement and reporting key information using a standardised reporting form<sup>(5)</sup>.

Relevant judgements were defined as legal determinations from courts or administrative bodies that were published within the relevant period of the study (1 January 2017 to 31 October 2022). January 2017 was determined as the starting point of the relevant analysis period to provide continuity with the 2018 Baseline Study (the analysis period of which was January 2006 to December 2016).

Furthermore, relevant judgements could be of a civil, criminal, or administrative nature, reflecting the diversity of legal proceedings that may be brought in enforcing against trade secrets infringements. Relevant judgements were those that involved issues of (alleged) trade secrets infringement. Cases

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<sup>(4)</sup> A list of National Correspondents is provided in Annex I.

<sup>(5)</sup> A guide to the fields and response options in the standardised reporting form is provided in Annex II.

that made *obiter dicta* references to trade secrets legislation were not relevant for the study. Such non-relevant cases include instances where existence of a trade secret is raised during proceedings on another substantive issue (e.g. as a basis to deny freedom of information requests, or access to documents in public procurement proceedings), or in relation to motions for discovery of evidence, and where there was no substantive infringement issue.

Very often, a single litigation proceeding may involve trade secrets infringement as well as other legal claims (e.g. unfair competition, alleged infringements of other intellectual property rights, or employment and/or contract law issues). For this reason, during the reporting process, data was selectively collected only on the litigation details of the proceedings that were directly relevant to trade secrets infringement.

The raw data collected through this reporting process was then coded, consolidated, sorted, and analysed to produce the findings presented in Part I of this report. It is, however, important to note that a collection of case-law judgements – no matter how complete and thorough – cannot reflect the full scope of trade secret disputes. This is because no information is available on the extent to which disputes involving trade secrets are adjudicated via private or institutional arbitration, or the extent to which disputes are resolved through extrajudicial settlements.

Further to this quantitative analysis, the research team worked with National Correspondents to identify the main trends in the jurisprudence of Member States, and notable cases that are of particular relevance to the study. These inputs provided the basis for the qualitative analysis presented in Part II of this report. Short summaries of selected cases are also presented as Part III of this report.

## 2.1 Interpreting the analysis period

The 9 June 2018 transposition deadline for the Trade Secrets Directive falls within the relevant analysis period of 1 January 2017 to 31 October 2022. This means that the analysis represents trends within a period of a discontinuous legal environment – that is to say, before and after the implementation of the Directive. Moreover, as every Member State would have a different timeline for transposition, the post-Directive legal framework did not come into force on a uniform date across all countries. Consequently, the quantitative analysis in this report should be interpreted as a ‘macro’

view of trade secrets litigation trends within the EU, and care should be taken on drawing any inferences about the impact of the Trade Secrets Directive on these trends. Care should also be taken with the qualitative analysis, as post-Directive litigation trends are still evolving, and the pace of this development differs greatly among Member States, so that definitive EU-wide trends should not be inferred.

Furthermore, the reporting criteria were based on the date on which a case judgement was published. As a judgement is necessarily published sometime after a case is heard, it is possible that some of the data earlier in the period of analysis relates to proceedings initiated before 1 January 2017, but in which the judgement was published after 1 January 2017. Similarly, the data would necessarily exclude proceedings initiated before 31 October 2022 in which the judgements were published after that date.

## 2.2 Multiple-instance case law

The unit of data collection for this study is a single judgement related to alleged trade secrets infringement. It is the nature of litigation that legal disputes may be heard over multiple instances, and so the data collection methodology categorises proceedings into three possibilities: (i) preliminary-trial, (ii) first instance, and (iii) appeal.

Depending on the national legal system of a Member State, an explicit preliminary trial stage may not exist as a separate distinct proceeding from the first instance, or it may exist without the same judicial reporting requirements as those for substantive proceedings. Where they are practiced, preliminary trials might involve determinations on the court accepting the substantive claims of the claimant, issuing provisional measures, and instruction regarding presentation of evidence. A single 'case' can therefore involve one or more such instances (even multiple appeals), although the same parties and substantive issues are involved. Therefore, the analysis does not relate to trends in **cases** but rather trends in litigation **proceedings**, where, within the dataset, a single 'case' may appear multiple times due to reporting of its multiple proceedings.

In reporting national case-law, National Correspondents were asked to explicitly provide details, where possible, on different reported judgements related to 'connected cases' (i.e. multiple-instance cases). Separate analysis was made for all such judgements, to allow not only reporting on trends

in litigation proceedings, but also estimation of the number of unique **cases**, observed as a distinct metric from the number of proceedings reported.

Finally, the dataset may include reports on an appeal proceeding while excluding the first instance proceedings in the same case. This would occur when an appeal judgement was published after 1 January 2017, but the corresponding first-instance judgement was published before 1 January 2017.

## 2.3 Methodological limitations

The nature of any empirical study is that there are inherent limitations in the data collection process. This is specifically true where a methodology must be developed to quantify inherently qualitative attributes, such as the characteristics of a given litigation proceeding. This is particularly challenging in the case of trade secrets litigation, due to the wide variety of legal context and fact patterns that might follow from the very broad nature of undisclosed information. Furthermore, issues of judgement accessibility and details can create methodological limitations.

Nevertheless, all reasonable efforts were made by the research team and the National Correspondents to collect all relevant judgements, in order to create a dataset that is as complete and accurate as possible within these methodological imitations.

### 2.3.1 Quantifying fact patterns

Reporting case-law judgements necessarily involves approximating facts into discrete categories that can subsequently be quantified. There is, therefore, both some degree of informed discretion and some degree of data precision loss inherent in the data-collection process. For example, while there is no conceptual limit to the kind of undisclosed information that might qualify as a 'trade secret', the data collection process stipulated a closed list of ten discrete options<sup>(6)</sup>. As it is not possible to

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<sup>(6)</sup> The reporting form stipulated ten possible responses for the field 'Type of Trade Secret': (1) Technical: Manufacturing process/know-how, (2) Technical: Formulas or recipes, (3) Technical: Software programme/algorithm, (4) Technical: Other, (5) Commercial: Financial info (pricing models, accounting data), (6) Commercial: Upstream info (supply chain management, external costs), (7) Commercial: Downstream info (distribution methods, advertising strategies, marketing data, customer lists), (8) Commercial: Other, (9) Prototypes/unreleased product designs, (10) Unknown.



set out an exhaustive list of trade secret categories, each case must be described using the closest applicable category, or ‘unknown’ if the type of information cannot be discerned from the written judgement. To minimise the risk of divergent reporting of similar facts, Correspondents all used a uniform guide in interpreting the various reporting categories. Furthermore, the research team worked continuously with National Correspondents in order to clarify any ambiguities and ensure consistency in reporting modalities.

### 2.3.2 Details and anonymisation

A further methodological limitation is that different jurisdictions publish judgements with different degrees of detail on the fact patterns in proceedings. Not only do different legal systems have different national norms for anonymising case details, but this anonymisation can be heterogeneous across different fields, laws, and types of courts within a legal system. This is relevant for trade secrets litigation because proceedings can be brought before different specialised courts depending on the national legal system. Furthermore, the very nature of trade secrets law means that a great degree of sensitivity is needed when reporting on facts related to the undisclosed information itself. As a result, the level of detail that can be discerned for quantitative analysis differs across Member States, which can hinder the ability to make detailed comparisons between countries.

### 2.3.3 Access to case-law

While the structure of judgements poses a challenge when comparing the specificity of cases across countries, perhaps the greatest methodological limitation lies in comparing the overall volume of proceedings between Member States. States all have different systems in place for reporting judicial decisions and making them publicly available. In many cases, Member States have some form of online case-law database (private or open-access) which can be consulted for case-law collection. In other cases, the process of case-law collection may be more laborious. The main challenge appears to be that, in some jurisdictions, judgements from lower district courts are not available for public access<sup>(7)</sup>. Accessing these judgements may require explicit knowledge of a case’s existence or a formal freedom of information access request. It is therefore likely that, in some jurisdictions

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<sup>(7)</sup> This limitation is particularly evident in Czech Republic, Greece, Austria, and Slovenia; to a lesser extent, it applies in Germany, Spain, France, and Hungary.

where such limitations on publication exist, the volume of proceedings is underreported, especially for cases that were not subsequently appealed before higher courts.

## Part I: Quantitative Analysis

### 1 Analysis of case volumes

Reports on a total of **695** trade secrets litigation proceedings (in which the judgements were published between 1 January 2017 and 31 October 2022) were collected across the 27 EU Member States.

There are two caveats in interpreting this volume, which operate in different directions. First, the actual number of cases is necessarily lower, as a single case may involve multiple proceedings through different instances before the courts. Second, due to the methodological constraint of restricted access to lower court judgements<sup>(8)</sup>, the actual volume of proceedings is necessarily higher.

In order to determine which Member States are characterised by disproportionately high or low litigation volumes, the reported volume of proceedings can be compared with the expected volume. Expected case volumes were calculated based on Member States' levels of (a) GDP and (b) patenting activity<sup>(9)</sup>. A Member State's 'expected volume' is the number of proceedings it would have if the total dataset of **695** proceedings were distributed proportionally to each State's (a) relative GDP contribution to the EU economy, or (b) relative level of patenting activity based on EPO applicant/inventor country of residence. The relative deviation in volume can then be calculated by: (1) finding the difference between expected and actual volumes, then dividing by expected volume; or (2) dividing proceeding proportion by GDP/patent proportion. For deviation measure (1), a high positive number indicates that observed volumes are higher than expected, while a negative number indicates that volumes are lower than expected. For deviation measure (2), the further the ratio from parity (i.e. a value of 1), the greater the divergence between actual and expected volumes. This

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<sup>(8)</sup> See Overview of the Study, Section 2.3.3.

<sup>(9)</sup> The logic of using relative GDP as a benchmark is based on the notion that use of trade secrets (and therefore the level of trade secrets litigation) might be presumptively proportional to the overall level of economic activity in a Member State. The use of patenting activity as a benchmark is based on the fact that the economic literature tends to stress the role of trade secrets in supporting innovation, particularly in terms of the types of innovations that might not meet the threshold for patentability; therefore, there is a presumptive relationship between the use of trade secrets (and therefore the level of trade secrets litigation) and patenting activity, as both are metrics that capture the return on innovation investments.

analysis is summarised in Table 1, while the data on which it is based is presented in Annex III. By observing which Member States have anomalous metrics on this basis, it can be deduced that:

- Member States with **disproportionately high** trade secrets litigation levels include Bulgaria, Estonia, Croatia, Italy, Latvia, Lithuania, Hungary, Romania, Slovakia, and Slovenia.
- Member States with **disproportionately low** trade secrets litigation levels include France, Germany, and Austria<sup>(10)</sup>.

By way of illustration, Bulgaria has 36 proceedings for trade secrets litigation in the relevant period, representing 5.2 % of the EU-wide proceedings dataset, though it accounts for only 0.4 % of EU GDP and less than 0.1 % of patenting activity. France, on the other hand, has 52 proceedings for trade secrets litigation in the relevant period, 7.5 % of the proceedings dataset – while it accounts for 17.6 % of EU GDP and 16.6 % of patenting activity.

The Member States with disproportionately high litigation volumes are states that also generally demonstrate lower performance in terms of GDP per capita and Global Innovation Index score. The inverse observation also applies, though less strongly – that is to say, Member States with disproportionately low litigation volumes generally perform better in terms of GDP per capita and Global Innovation Index score. These observations do not appear to correlate with GDP growth rates in any meaningful way.

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<sup>(10)</sup> Austria is one of the Member States in which access to lower court decisions is limited. There are three instances for trade secrets cases: (i) Regional Courts, (ii) Higher Regional Courts, and (iii) the Supreme Court. Only Supreme Court decisions are mandated to be published, while lower instance courts only publish decisions at their discretion; there is only one senate of the Higher Regional Court of Vienna that publishes second instance decisions if they are not appealed.

Member State	No of proceedings	Proceedings proportion	GDP proportion	Expected cases (GDP)	Patent application proportion	Expected cases (patent)
Austria	5	0.007	0.028	20	0.035	24
Belgium	59	0.085	0.034	24	0.034	23
Bulgaria	36	0.052	0.004	3	0.001	0
Croatia	15	0.022	0.004	3	0.000	0
Cyprus	4	0.006	0.002	1	0.001	1
Czech Republic	3	0.004	0.015	10	0.003	2
Denmark	19	0.027	0.023	16	0.033	23
Estonia	17	0.024	0.002	1	0.001	1
Finland	10	0.014	0.017	12	0.028	20
France	52	0.075	0.176	122	0.166	116
Germany	39	0.056	0.250	174	0.400	278
Greece	3	0.004	0.014	9	0.002	1
Hungary	17	0.024	0.010	7	0.001	1
Ireland	2	0.003	0.023	16	0.010	7
Italy	151	0.217	0.133	92	0.068	47
Latvia	8	0.012	0.002	1	0.000	0
Lithuania	20	0.029	0.003	2	0.000	0
Luxembourg	1	0.001	0.004	3	0.008	6
Malta	1	0.001	0.001	1	0.001	1
Netherlands	36	0.052	0.056	39	0.110	77
Poland	38	0.055	0.036	25	0.007	5
Portugal	9	0.013	0.015	10	0.002	2
Romania	45	0.065	0.014	10	0.001	1
Slovakia	7	0.010	0.006	5	0.001	0
Slovenia	20	0.029	0.003	2	0.002	1
Spain	50	0.072	0.089	62	0.026	18
Sweden	28	0.040	0.037	26	0.059	41
<b>EU Total</b>	<b>695</b>	<b>1.000</b>	<b>1.000</b>	<b>695</b>	<b>1.000</b>	<b>695</b>

Table 1. Comparison of actual and expected litigation volumes

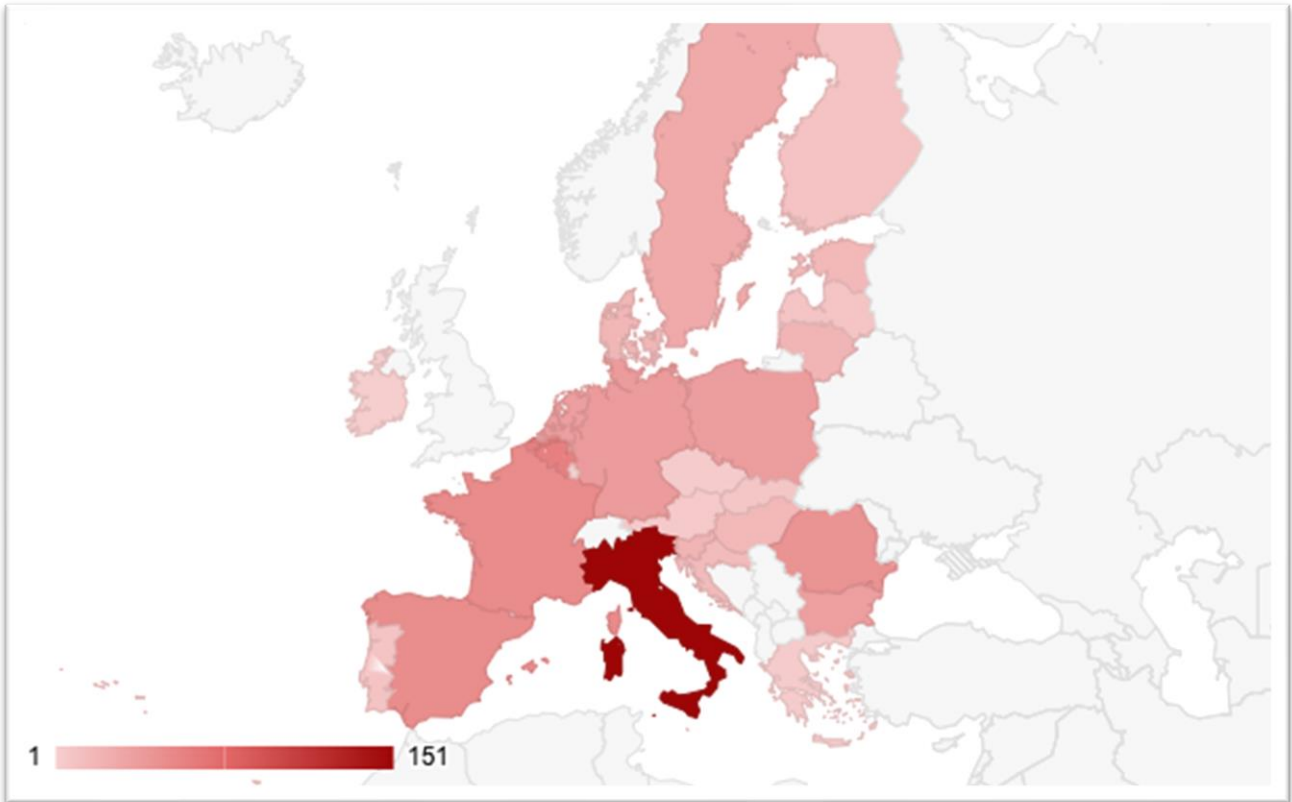


Figure 1. Heatmap of litigation volumes

## 2 EU-Wide quantitative analysis

### 2.1 Overview of proceedings dataset

Total number of proceedings reported:	695
Total number of unique cases (estimated):	586

The dataset of 695 proceedings was analysed based on reports of cases that were ‘connected’, in that they were heard across multiple reported instances within the study period. Based on this analysis, it is estimated that this dataset represents **approximately** 586 different unique cases. It is also estimated that less than 5 % of proceedings might be described as ‘pre-trial proceedings without first instances’. This categorisation suggests that some cases may have either (a) been initiated but subsequently settled before first-instance hearings on substantive issues, or (b) had their first instance judgements published after 31 October 2022.

It is also estimated that more than a third of the total cases can be categorised as ‘appeal proceedings without first instances’. This categorisation suggests that some appeals in the period were on cases in which the first instances occurred before the relevant data collection period (i.e. before 2017). This figure is likely to have been overestimated due to data reported from jurisdictions where first-instance judgements were not available (i.e. only appeals judgements are reported).

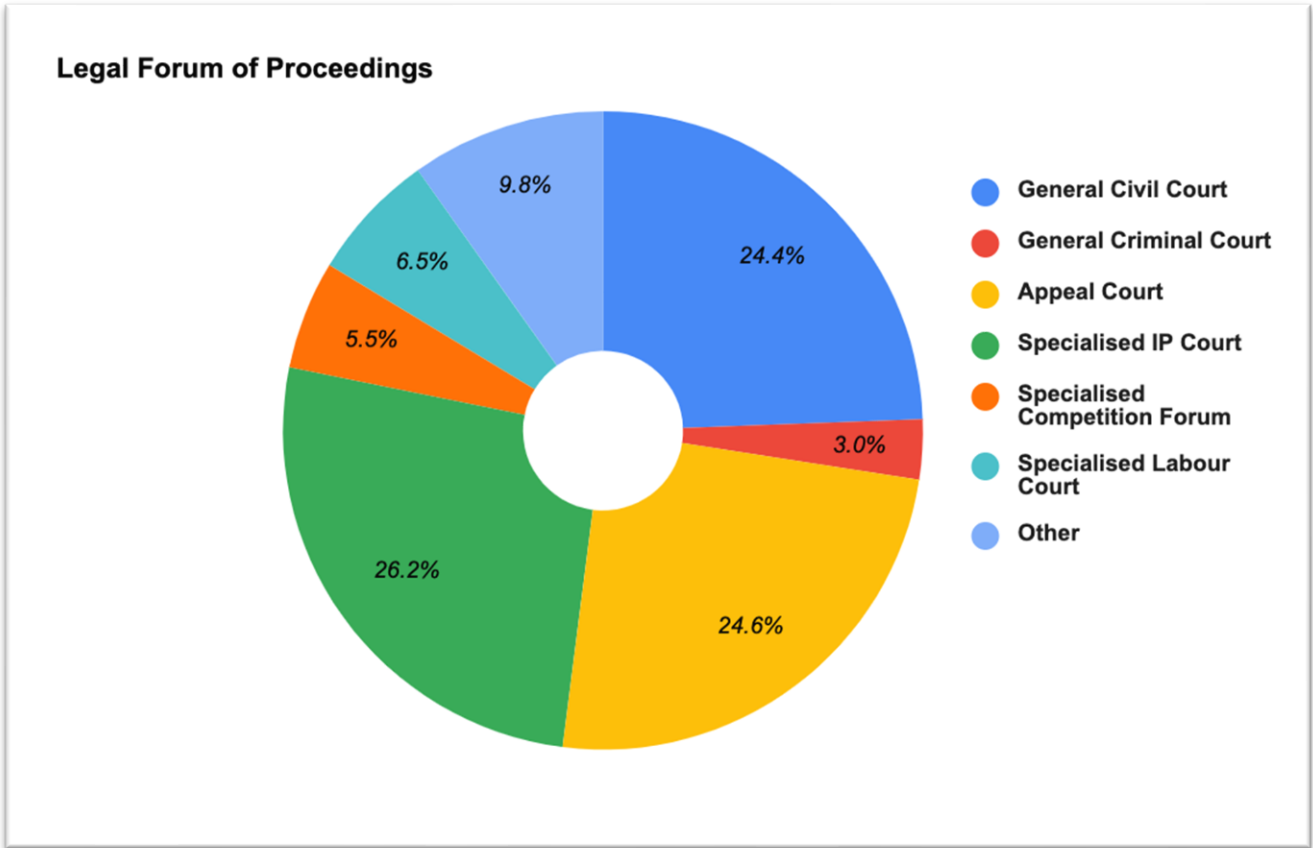


Figure 2. Distribution of legal fora

- The most common fora for trade secrets litigation proceedings appear to be Specialised IP Courts (26 %), Appeal Courts (25 %), and General Civil Courts (24 %). 7 % of proceedings are heard before Specialised Labour Courts, and 6 % before Specialised Competition Fora<sup>(11)</sup>.
- The vast majority of proceedings are categorised as ‘civil cases’ (89 %), with a minority categorised as ‘administrative cases’ (5 %) or ‘criminal cases’ (6 %).

<sup>(11)</sup> The category ‘General Civil Court’ is understood as including commercial and trade courts.



## 2.2 Case outcome trends

Appeal rate: 46 %

*(proportion of cases appealed)*

Infringement claim success rate: 27 %

*(proportion of claims resulting in a finding of infringement)*

The 'Appeal Rate' is calculated as the ratio between the 'number of proceedings categorised as appeals' and the estimated number of unique cases. This rate may be overestimated due to the presence of cases with multiple appeal instances. More critically, this rate is overestimated due to the bias in the dataset towards appeal judgements because of methodological limitations and the underrepresentation of first-instance judgements. The 'infringement claim success rate' is calculated as the ratio between the 'number of proceedings in which a claim is reported as upheld and infringement is found' and 'the number of proceedings in which a substantive determination on infringement is reported'.

### 2.3 Party profiles

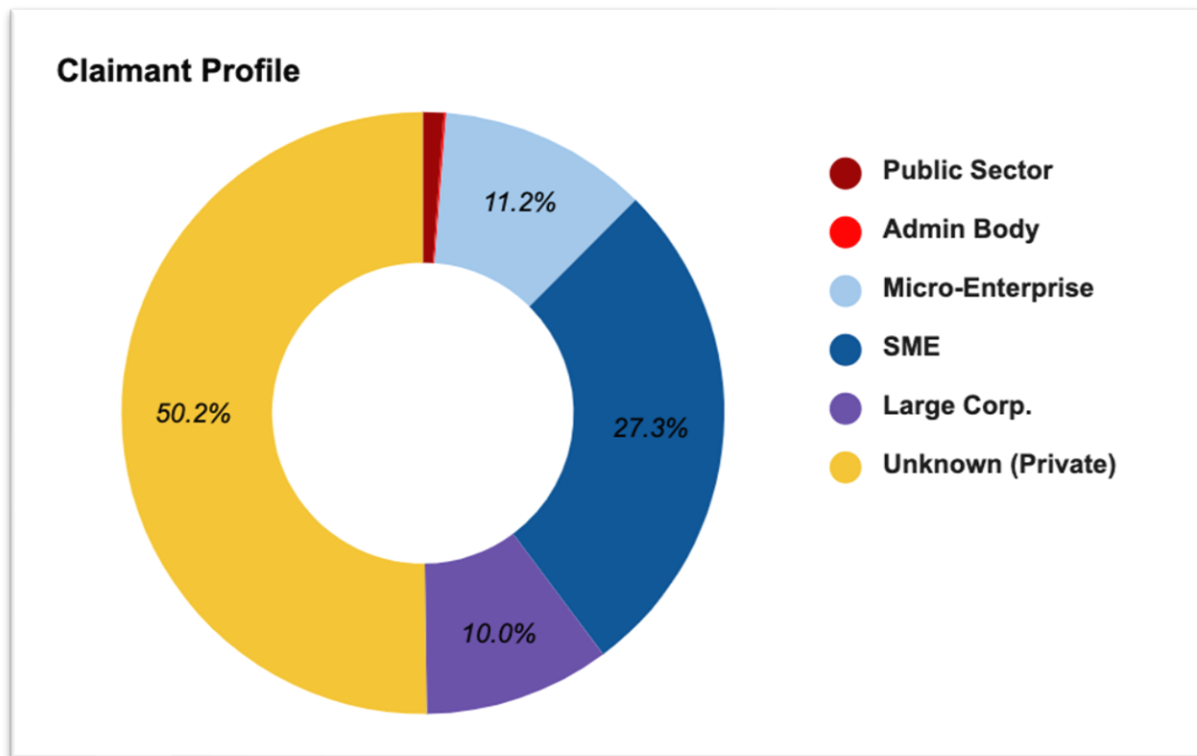


Figure 3. Distribution of claimant profiles

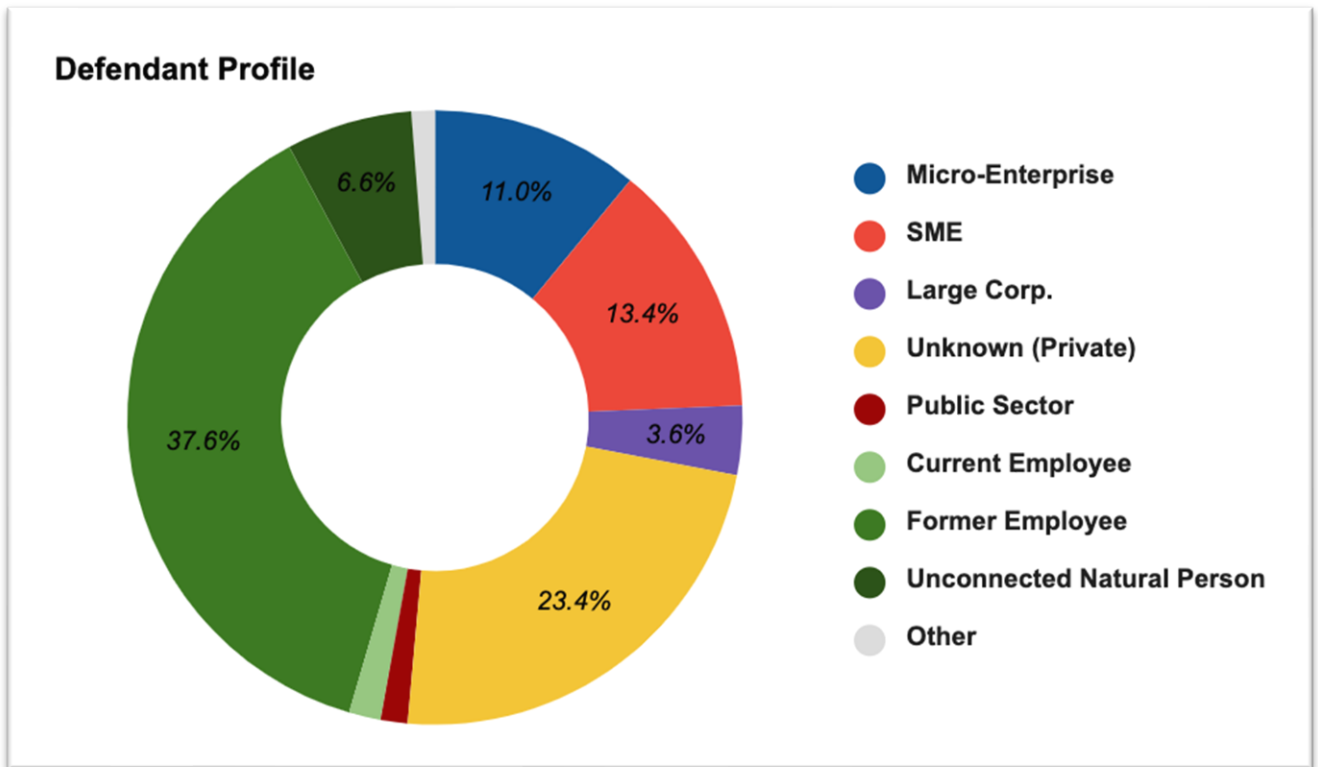


Figure 4. Distribution of defendant profiles

Party profiles are based on the reported categorisation of claimants and defendants. This does not necessarily represent case categorisation in a proportional manner, as a single proceeding may be reported as having multiple claimants and/or defendants.

- In most proceedings, claimants are private undertakings, although judgements do not always allow easy determination of their economic size. 27 % of claimants are categorised as SMEs, 10 % as large corporations, and 11 % as micro-enterprises.
- A large proportion of defendants (23 %) are categorised as private entities whose exact economic size/nature cannot be ascertained. A large proportion of defendants (38 %) are explicitly identified as former employees. 13 % of defendants are categorised as SMEs, 11 % as micro-enterprises, and 4 % as large corporations.

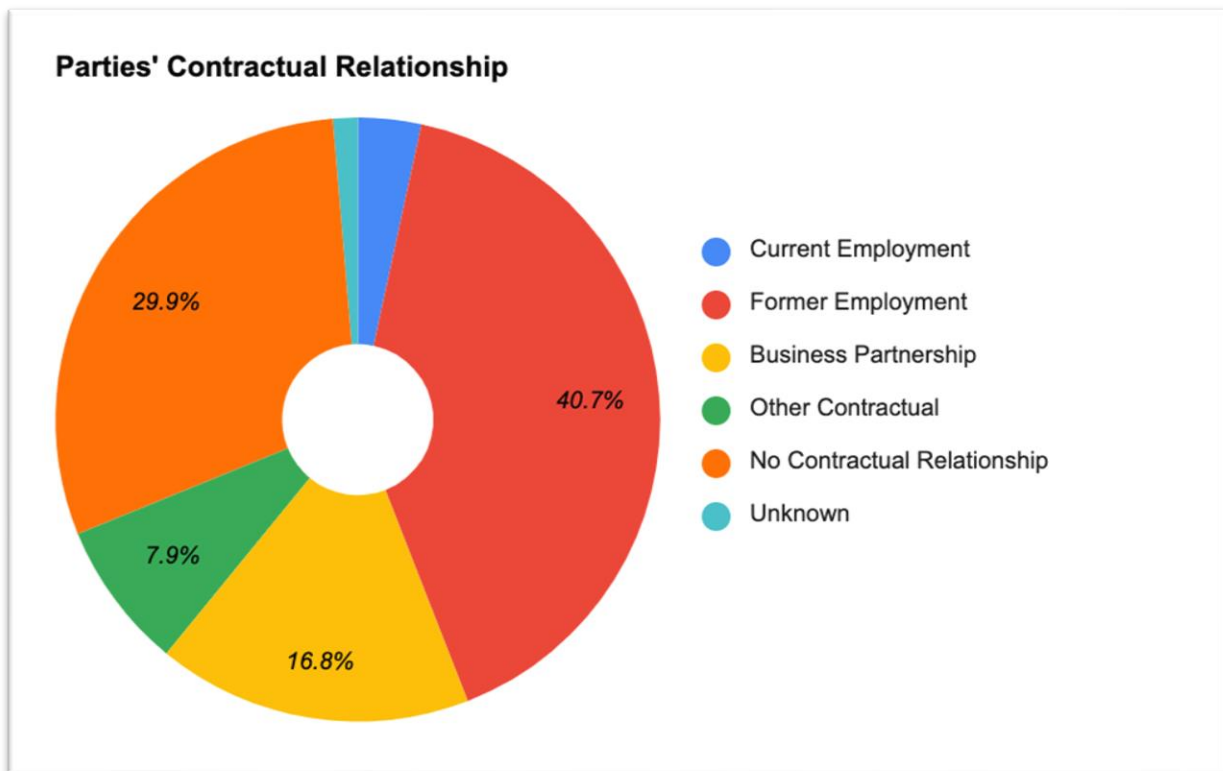
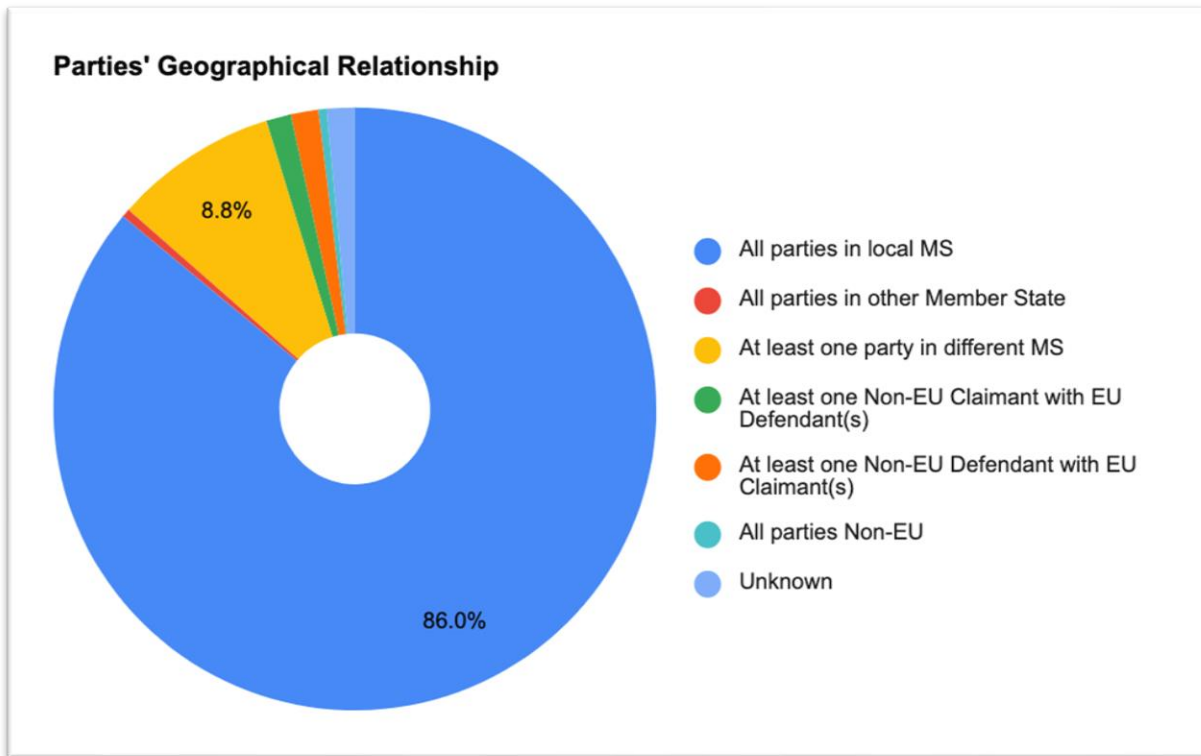


Figure 5. Distribution of claimant-defendant contractual relationships



**Figure 6. Distribution of claimant-defendant geographical relationships**

- 30 % of claimant-defendant relationships are categorised as ‘no known contractual relationship’<sup>(12)</sup>. 41 % of are categorised as a former-employment relationship, a finding consistent with the proportion of defendants categorised as former employees. Only 17 % of claimant-defendant relationships are categorised as a ‘business relationship’.
- In the vast majority of proceedings where geographic relationships can be identified (86 %), all parties are situated in the same Member State in which the proceedings are heard. On about 9 % of occasions, however, at least one party (either a claimant or defendant) was based in a different Member State. Overall, trade secrets litigation throughout the EU during the study period appears to be highly localised, with limited incidence of cross-border dimensions.

<sup>(12)</sup> In interpreting ‘no contractual relationship’ categorisations of claimant-defendant relationships, it should be noted that a common fact pattern is that a former employee starts a new company, and both the former employee and the new company are defendants. In such cases, the new company may be categorised as having no contractual relationship with the claimant, although the true relationship is an extension of the former employment relationship.

## 2.4 Technical and economic trends

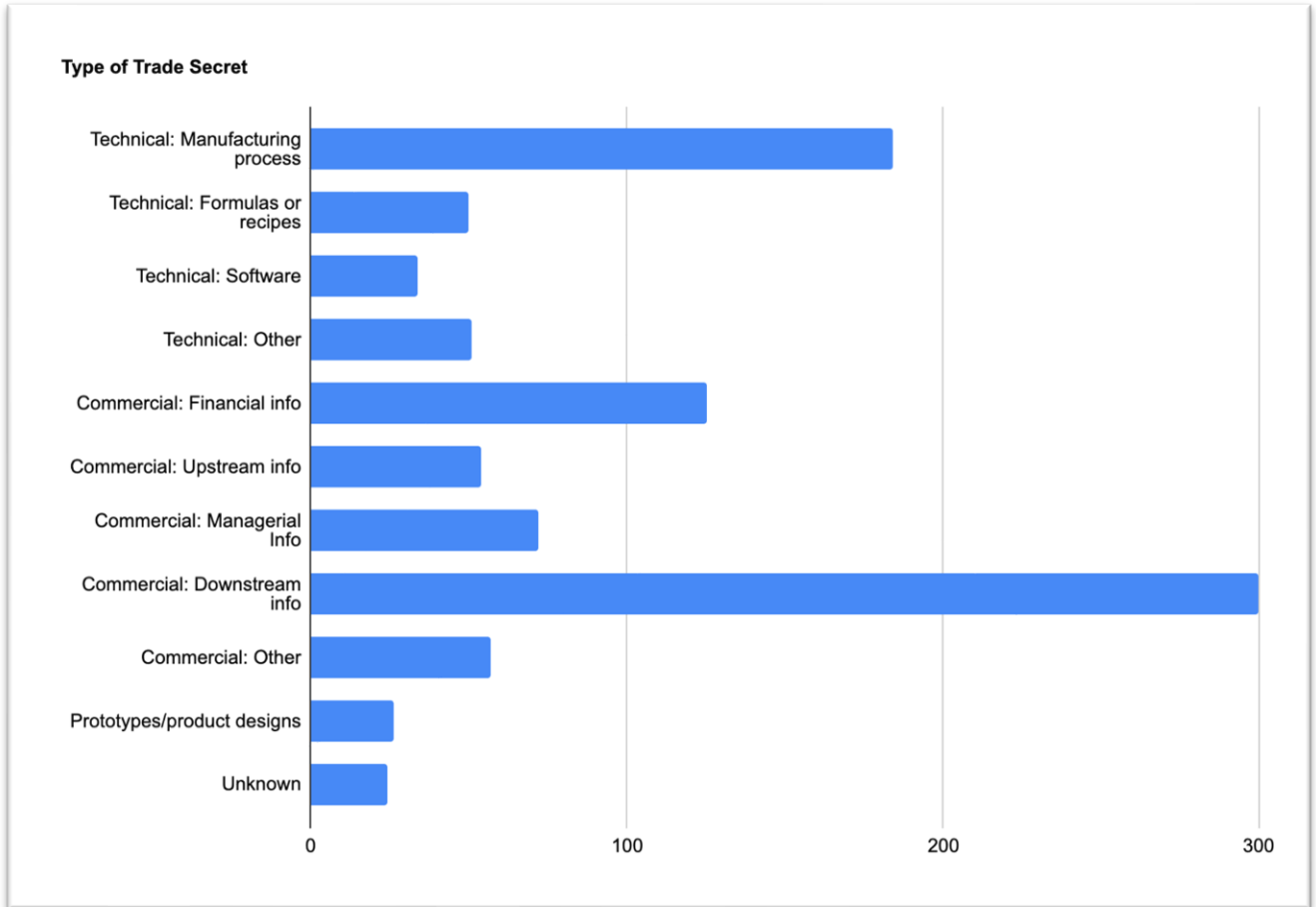


Figure 7. Distribution of types of trade secrets <sup>(13)</sup>

- Disputed undisclosed information is more often broadly characterised as ‘commercial’ (62 %) than as ‘technical’ (33 %). The most common types of commercial information in proceedings were ‘downstream information (distribution methods, advertising strategies, marketing data, customer lists)’ (31 %), and ‘financial information (pricing models, accounting data)’ (13 %). The most common technical information in proceedings was ‘manufacturing process/know-how’ (19 %). Only 3 % of proceedings involved information characterised as ‘prototypes/unreleased product designs’.

<sup>(13)</sup> A single proceeding may be characterised as involving multiple types of trade secrets.

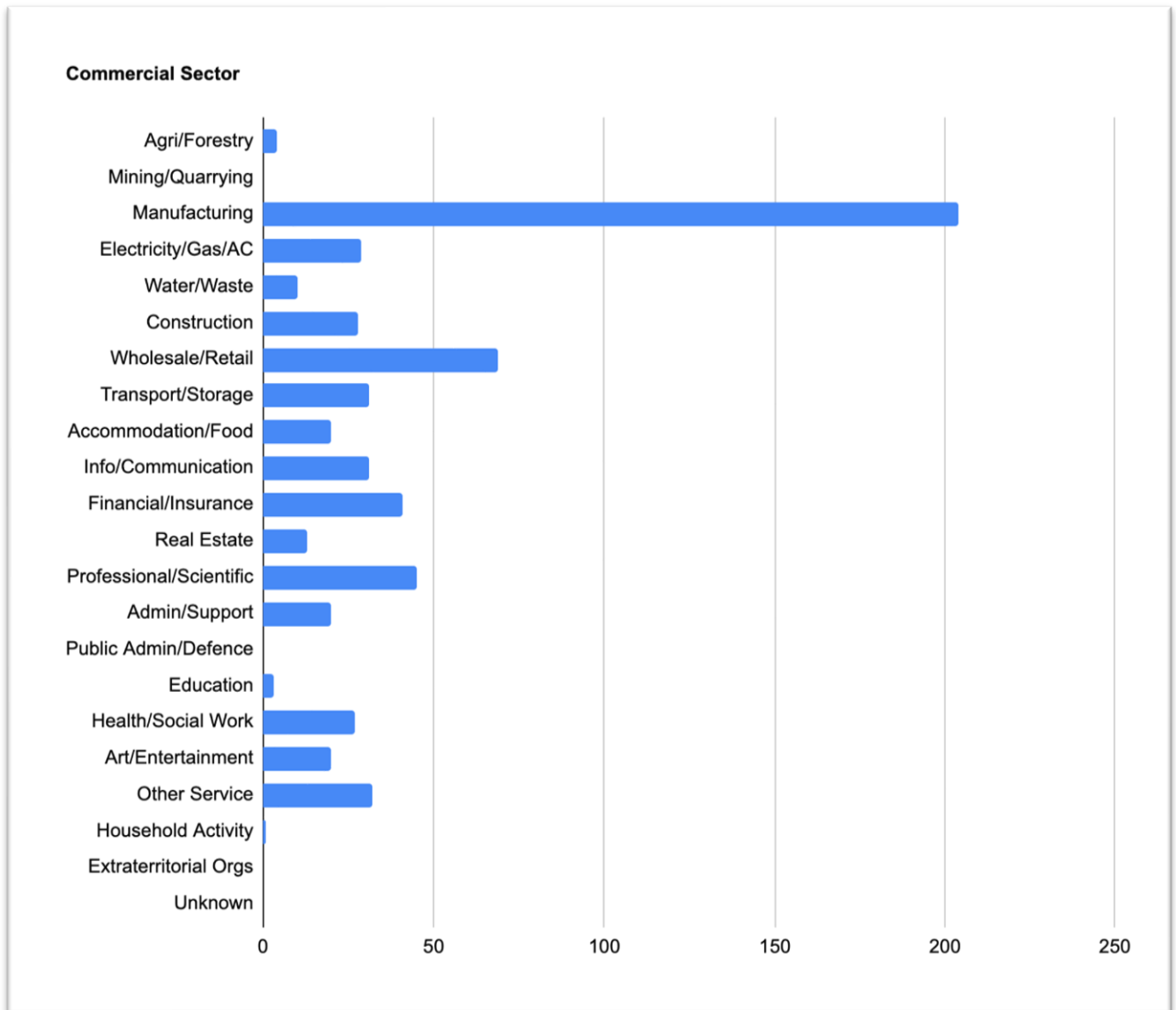


Figure 8. Distribution of commercial sectors implicated <sup>(14)</sup>

- The commercial sectors implicated in trade secret infringement proceedings are relatively diverse (insofar as they can be deduced from reported judgements). Manufacturing represents the highest proportion (32 %) of sectors identified in proceedings, although it is a very broadly defined sector. In most judgements, little information is available to identify the economic sub-sector more specifically. However, in cases involving ‘manufacturing’ where more detailed identification is possible, the sub-sectors that appear to be subject to litigation most often are

<sup>(14)</sup> Commercial sector classifications are based on the ‘Statistical classification of economic activities in the European Community’ classification system for economic activities in the European Community (NACE Rev. 2).

‘manufacture of machinery and equipment’ and ‘manufacture of chemicals and chemical products’.

- Other notable sectors include ‘wholesale and retail trade; repair of motor vehicles and motorcycles’ (11 %), ‘financial and insurance activities’ (7 %), and ‘professional, scientific and technical activities’ (7 %).
- Narrowing down to the subset of proceedings in which ‘technical information’ was involved, ‘manufacturing’ dominates even more significantly, being implicated in approximately half of proceedings.
- Narrowing down to the subset of proceedings in which ‘commercial information’ was involved, the commercial sectors implicated are much more evenly distributed. ‘Manufacturing’ still accounts for the largest share (20 %), while ‘wholesale and retail trade; repair of motor vehicles and motorcycles’ represents 15 %. No other sector accounts for more than 10 % of proceedings.



## 2.5 Legal proceedings

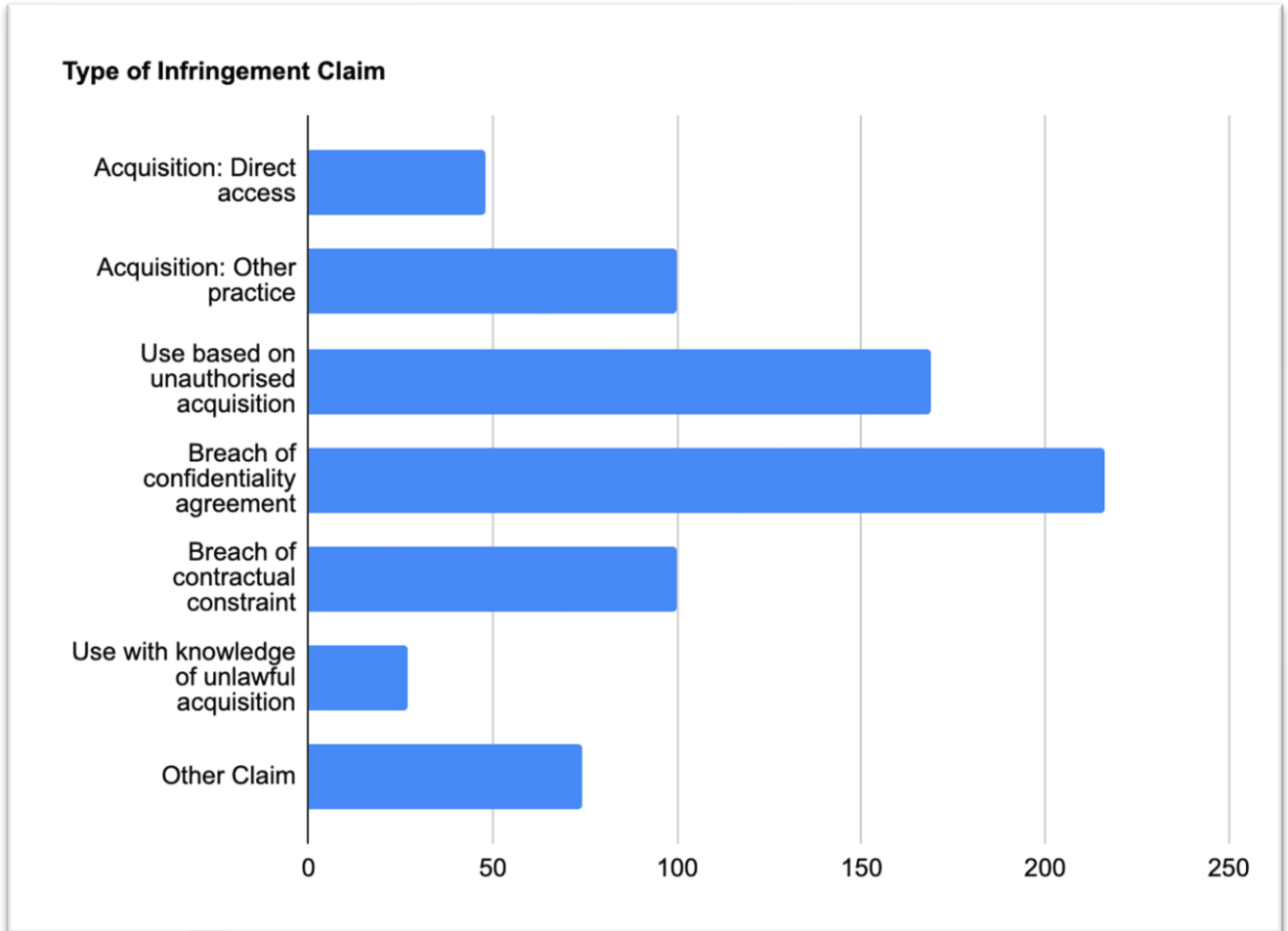


Figure 9. Distribution of claims filed <sup>(15)</sup>

- Within the trade secrets litigation proceedings dataset, the most commonly identified infringement claims were ‘unauthorised use/disclosure: breach of confidentiality agreement’ (29%), and ‘unauthorised use/disclosure: based on unauthorised acquisition’ (23%). ‘Unauthorised use/disclosure: breach of contractual constraint’ accounts for 14 % of claims, while ‘authorised acquisition’ (through either direct access or other unfair practice) accounts for 20 % of claims. The claim of ‘acquisition/use/disclosure with knowledge of unlawful acquisition by third-party source’ is relatively rare, representing only 4 % of reported infringement claims.

<sup>(15)</sup> The distribution of the types of claims made does not necessarily reflect the actual distribution of infringement allegations at a case level, as some reported proceedings might involve multiple reported claims, while in other cases the exact type of claim may not be explicitly ascertainable.

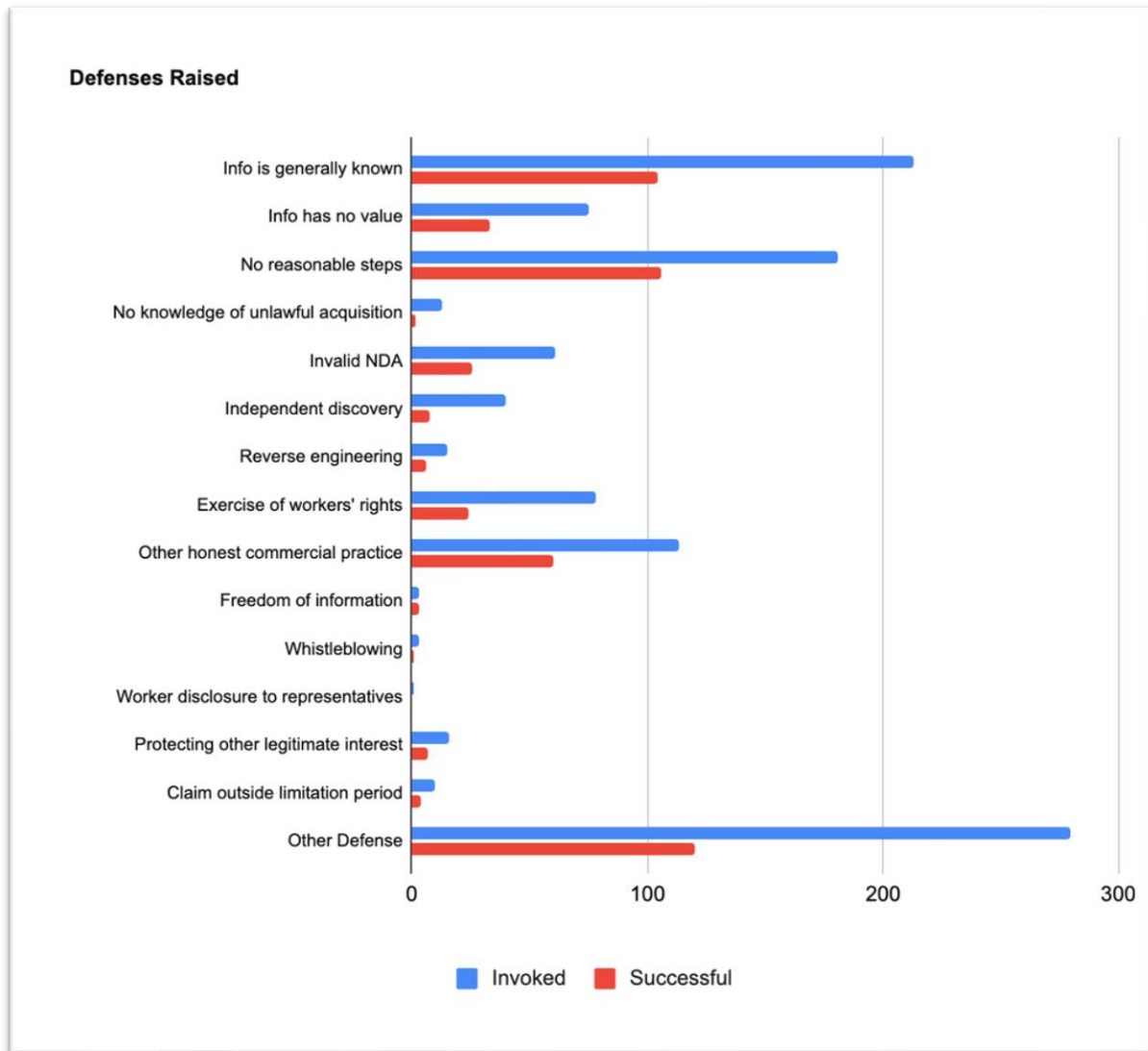


Figure 10. Distribution of defences invoked and successful defences <sup>(16)</sup>

- As noted above, the overall claim success rate was 27 %, meaning that in 73 % of proceedings where a substantive determination on infringement was made, the determination was in favour of the defendant. This may or may not be attributable to a successfully raised defence, as claimants can lose a case on procedural or other grounds, or even a defence considered by the court but not explicitly raised by the defendant.

<sup>(16)</sup> The distribution of defences does not necessarily reflect their distribution at a case level, as some reported proceedings may involve multiple invoked defences, while in other cases the exact defence might not necessarily be explicitly ascertainable (or attributable to a specific claim). Furthermore, some judicial authorities may consider defences not explicitly invoked by defendants.

- Of the identified and pre-categorised defences, the most commonly raised defence was that no trade secret exists because the claimed information is generally known. The second most common identified defence was that no trade secret exists because the claimant failed to take the reasonable steps necessary to keep the information from being disclosed.
- The discrepancies between the higher rate of non-infringement outcomes and the apparent low success rate of invoked defences may be due to: (i) the fact that a single case often involves multiple raised defences, many of which may be unsuccessful even if no infringement is found; and (ii) situations where, even if invoked defences can be identified from judgements, the case outcome cannot be directly and explicitly attributed to a single identifiable defence.
- In the dataset, the exceptions under Article 5 of the Trade Secret Directive (e.g. in exercising the right to freedom of expression and information) appear to be raised very rarely as defences.
- In the dataset, there were only 36 reported instances of a 'bad faith counterclaim' being raised, and only in 5 instances were these counterclaims successful.

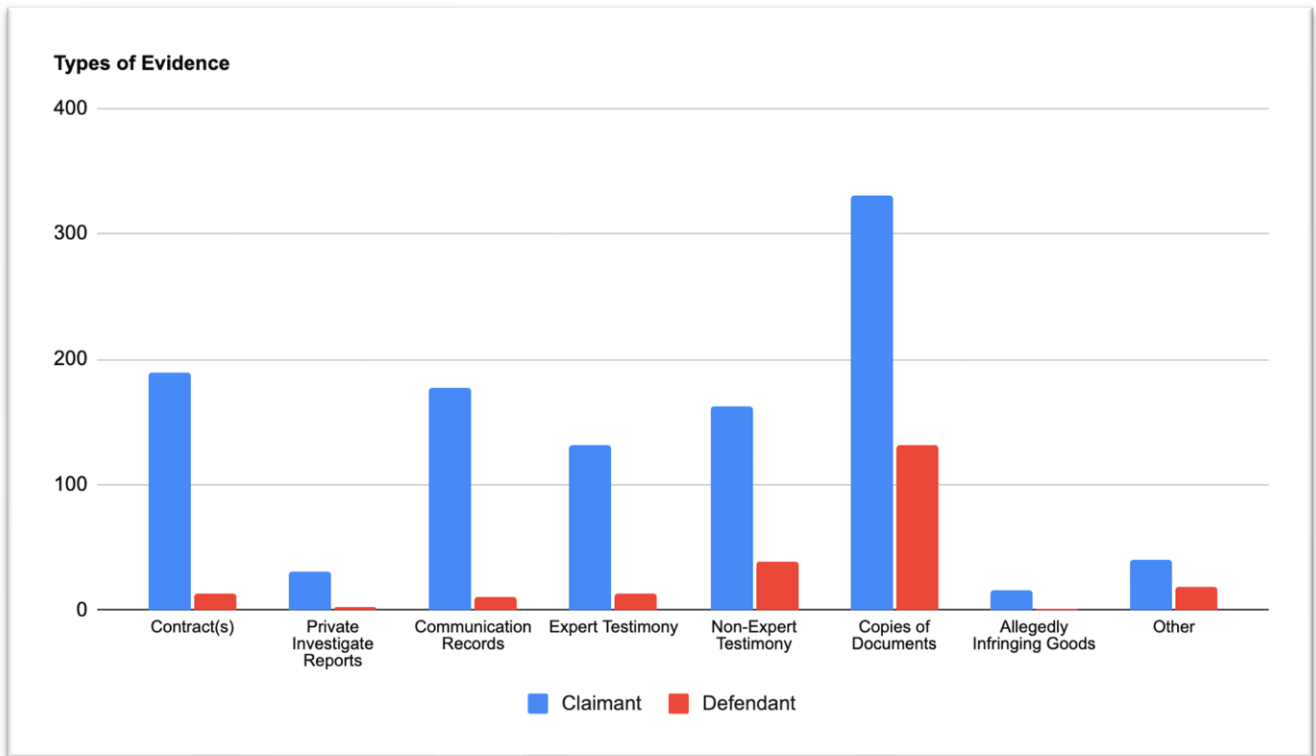


Figure 11. Types of evidence filed

- Generally, more information could be ascertained from judgements about the types of evidence filed by claimants in support of their infringement claims than about the types of evidence filed by defendants<sup>(17)</sup>. The most commonly observed form of evidence used was copies of documents. Contracts were commonly used, which is in line with the observation that a high proportion of cases involved employment relationships. Very few cases were observed in which units of allegedly infringing goods were used as evidence, which is somewhat consistent with the significantly higher incidence of overall litigation over commercial information than over technical information.
- Information on the ‘measures used by the court to preserve confidentiality during proceedings’ could not often be ascertained in most judgements. Insofar as this information was ascertainable, 73 judgements indicated use of ‘limits on access to trade secret-containing documents’, 10 indicated ‘limits on access to judicial hearings’, and 88 indicated explicit ‘publication of the judicial decision in redacted form’. This may be because such measures

<sup>(17)</sup> Not all judgements contained information on the types of evidence filed by parties in support of their claims. Furthermore, multiple forms of evidence would often be filed by a party in a single proceeding.

might form part of the procedural operations of the court rather than the explicit application of substantive law and are therefore not reflected in published judgements.

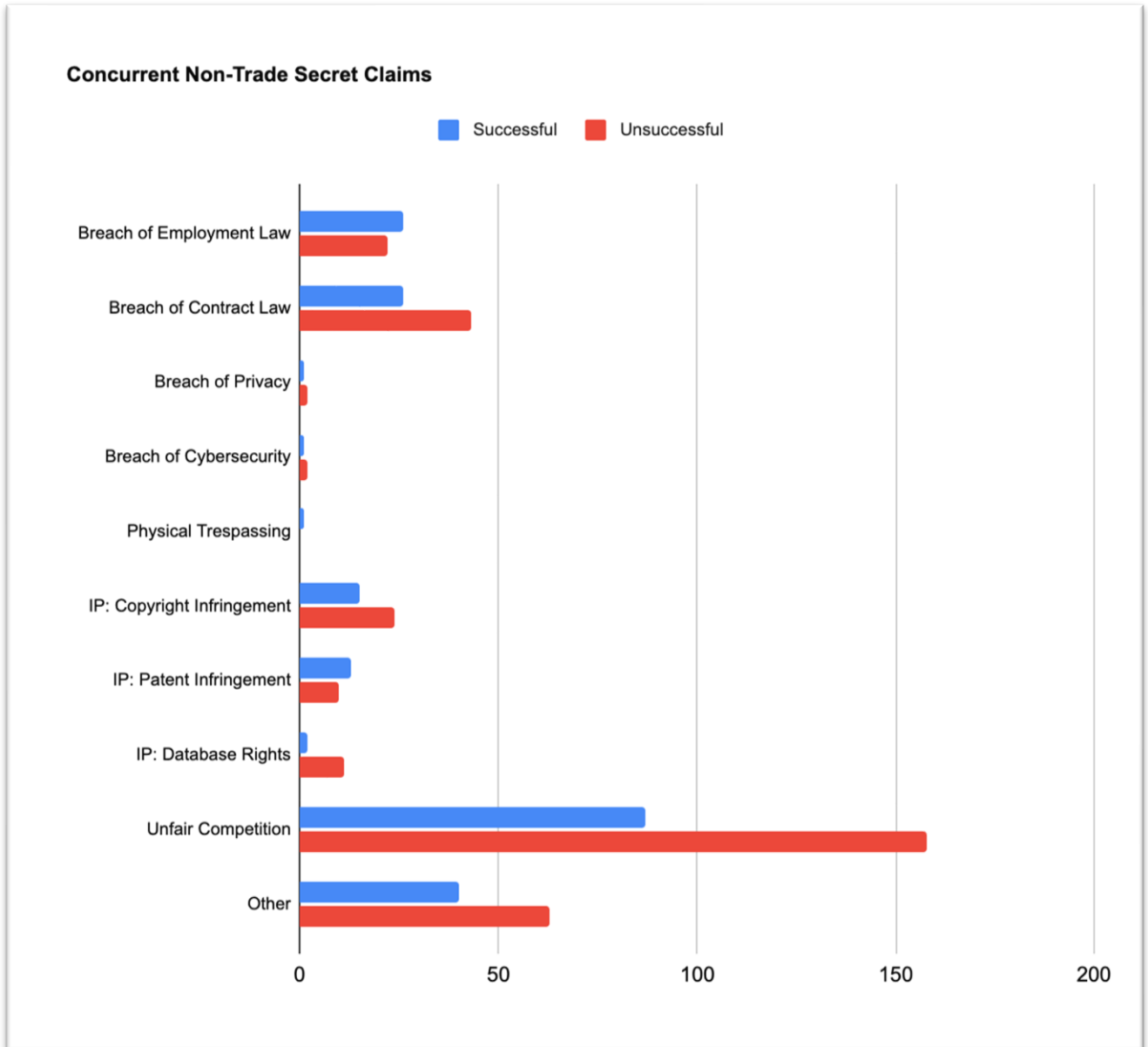


Figure 12. Concurrent non-trade secret claims filed <sup>(18)</sup>

<sup>(18)</sup> This information only reflects instances where the non-trade secret claim was considered in the same proceedings as the trade secret claim. It is likely that, in many cases, separate independent proceedings over non-trade secret claims will occur.

- 35 % of reported proceedings on trade secrets litigation also involved a claim of unfair competition within the same proceedings. In these instances, the unfair competition claim was successful 36 % of times it was raised. Though the number of observed instances is small, breach of employment law and patent infringement are the only concurrent claims that were successful more often than not.

## 2.6 Trends in measures

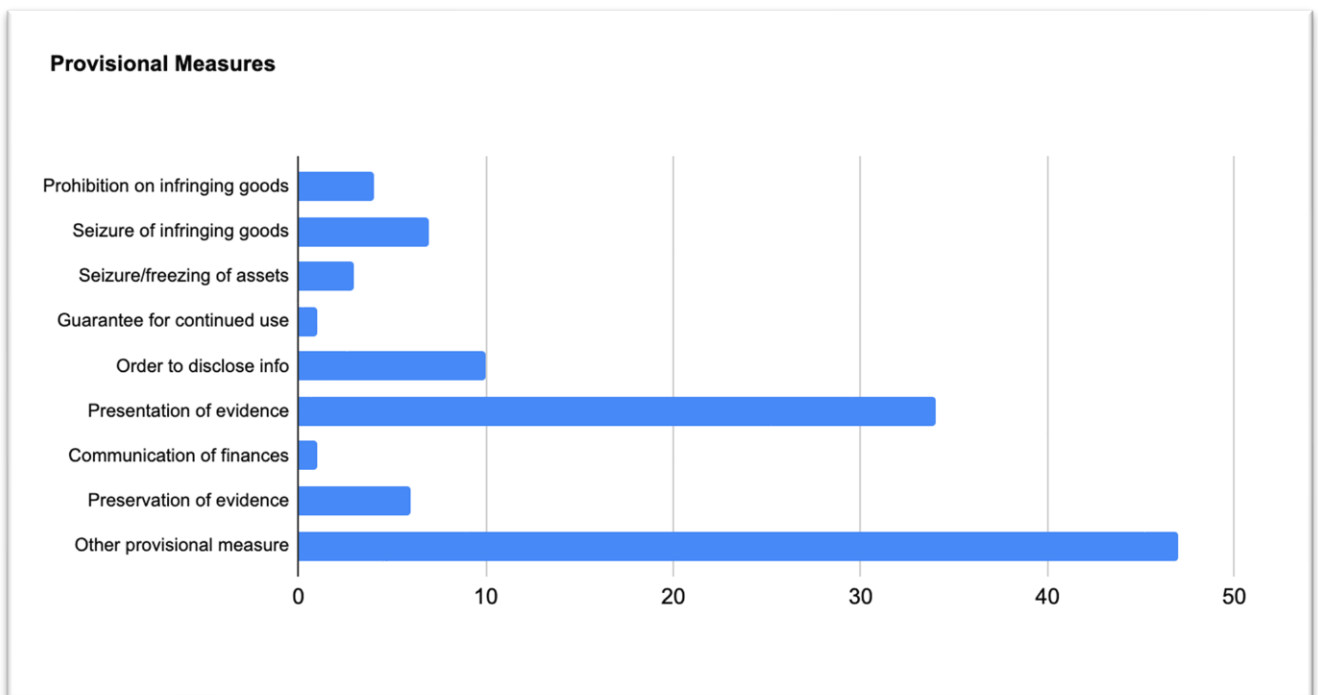


Figure 13. Provisional measures granted

- A total of 163 instances of provisional measures were observed<sup>(19)</sup>. Where the exact provision measure was categorised, the most common measure was an order for the presentation of specific evidence.

<sup>(19)</sup> This does not reflect the proportion of cases in which provisional measures were granted, as a single proceeding might involve multiple different provisional measures.

- No information was generally ascertainable on ‘provisional measures requested by a claimant but denied by the court’. There is no indication of any instance where a provisional measure was granted and subsequently revoked.

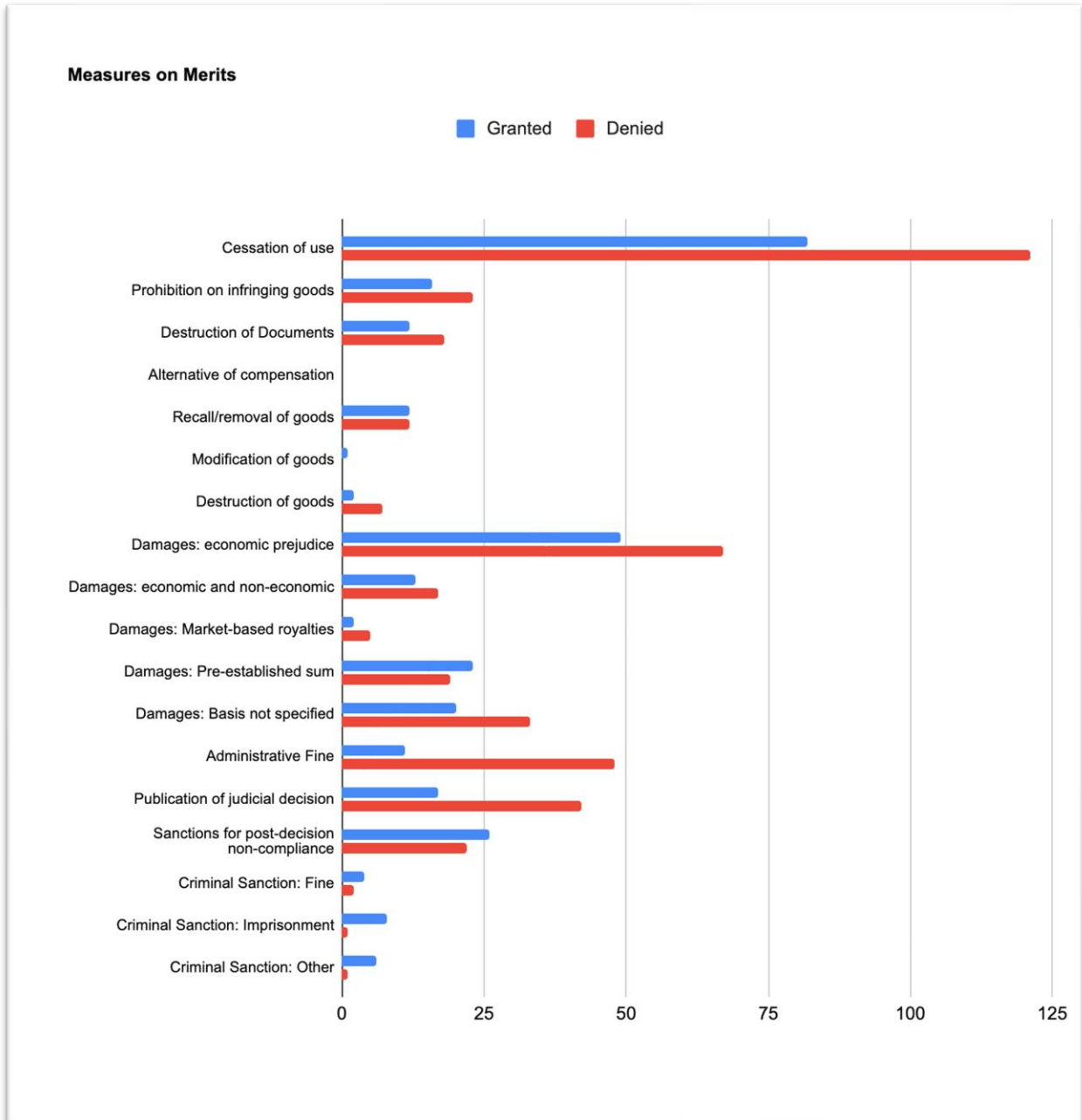


Figure 14. Measures granted/denied on merits of claims <sup>(20)</sup>

<sup>(20)</sup> Care should be taken when interpreting the grant rate of specific requests for measures, as the measures requested by claimants are not always ascertainable from written judgements.

- The most commonly identified measure granted on the merits of claims is an order for the cessation of use and/or the prohibition of use of the trade secret by the unsuccessful defendant.
- Explicit orders for the recall, removal, modification, or destruction of infringing goods appear to be relatively uncommon (occurring in only 15 proceedings).
- A total of 107 proceedings involved the grant of damages; this was most commonly based on the economic prejudice incurred by the successful claimant.
- The exact quantum of damages could only be ascertained in 60 cases; this may be due to exact damage awards being redacted from final judgements as published, or calculation of damage proceedings occurring at a later separate proceeding outside litigation under the relevant trade secret legislation. Summary statistics for these cases where the damage quantum is known are presented below, showing a significant variation in the damages granted.

<b>Descriptive statistic</b>	<b>Amount in euro</b>
Maximum	7 852 123.50
Minimum	1 000.00
Average	410 680.72
Median	32 711.18
Standard deviation	1 236 095.52

**Table 2. Descriptive statistics on damage awards**



## 3 Member State summaries

Short summaries are presented below for Member States in which the volume of analysed proceedings is greater than (or close to) 30 individual judgements. For Member States with smaller proceedings volumes, the dataset is generally too small to conduct a meaningful statistical analysis.

### 3.1 Belgium

Total proceedings reported:	59
Appeal rate:	16 %
Infringement claim success rate:	30 %

#### **Legal forum of proceedings**

Of the proceedings analysed, 10 % were before an appeal court and 9 % before a specialised labour court. Most Belgian proceedings were before regional commercial courts. All Belgian proceedings were categorised as civil cases, with no criminal cases and no administrative cases.

#### **Party profiles**

In most Belgian proceedings, the claimants were private undertakings, though the judgements do not allow an easy determination of their economic size. Over half of the categorised defendants were private entities whose exact nature cannot be ascertained, with 27 % of defendants categorised as former employees. 31 % of claimant-defendant relationships were categorised as former employment, with 20 % described as some other form of business relationship. In the vast majority of proceedings, all parties were situated in Belgium, with only 12 % involving an intra-EU dimension.

#### **Technical and economic trends**

In proceedings where the type of trade secret could be ascertained, 65 % of trade secrets were characterised as commercial, with 27 % characterised as technical. The highest occurrences were downstream commercial information (39 %), financial information (17 %), and manufacturing processes (17 %). The commercial sectors implicated were relatively diverse, with manufacturing representing the highest proportion (25 %), followed by wholesale and retail services (18 %), and financial and insurance (16 %).

### Legal proceedings

Among the identified claims, 21 % were for unauthorised acquisition based on direct unauthorised access, 36 % were for breach of a confidentiality agreement, and 23 % were for unauthorised use or disclosure based on unauthorised acquisition. Of the identified and itemised defences, the most commonly raised defence (as well as the defence with the highest success rate, succeeding on 9 of the 12 occasions it was invoked) was that no trade secret exists because the information is generally known and is not secret. In only one case was a bad faith counterclaim identified as being explicitly made, and in that case the counterclaim was rejected. There were 19 concurrent claims of unfair competition within the same proceedings; in these instances, the unfair competition claim was successful on 8 occasions (42 % success rate). 11 concurrent claims related to breaches of contract law are also noted, though these claims were only successful on 3 occasions.

### Trends in measures

In most proceedings, no provisional measures were granted. Most proceedings (80 %) considered an injunctive measure of cessation and prohibition on use of the trade secret. This measure was denied in 29 instances and granted in 18 instances (a grant rate of 38 %). Two cases resulted in an award of damages, though the exact quantum of damages was not reported.

### Overall assessment

In contrast with the EU-wide trend, the primary fora for trade secrets litigation in Belgium were Regional Business Courts. Appeal rates were notably lower (16 % v 46 % EU-wide), while claim success rates were on a par with the EU average (30% vs 27% EU-wide).

## 3.2 Bulgaria

Total proceedings reported:	36
Appeal rate:	50 %
Infringement claim success rate:	7 %

### Legal forum of proceedings

Among the proceedings analysed, 3 % took place before an appeal court, 20 % before a general civil court, and 78 % before a specialised competition forum. Most actions were brought by the

Commission on Protection of Competition, and judgements were rendered by the first instance of the Supreme Administrative Court, which is the competition law court in Bulgaria. Most Bulgarian cases were brought under the Protection of Competition Act. In total, 28 proceedings were characterised as administrative, 8 as civil, and none as criminal.

### **Party profiles**

In terms of claimant profiles (right holders, in the case of administrative cases), 36 % were categorised as SMEs, 19 % as microenterprises, 8 % as large corporations, and the rest as private undertakings of unknown size. Over half of categorised defendants were former employees (53 %), with 17 % categorised as SMEs, and 19 % as microenterprises. In most proceedings, all parties were situated in Bulgaria, with only 6 % of cases involving an intra-EU dimension.

### **Technical and economic trends**

79% of trade secrets were characterised as commercial, and just 20 % as technical. The highest occurrences were of financial information (33 %), and downstream commercial information (34 %). The commercial sectors implicated were relatively diverse, with the most prevalent sectors being wholesale/retail trade (39 %) and manufacturing (14 %).

### **Legal proceedings**

Of all the claims analysed, 48 % were based on breach of a confidentiality agreement, while 45 % were for 'unauthorised acquisition: other practice'. Of the identified and itemised defences, the most commonly raised defence was that no trade secret exists because reasonable steps were not taken to keep the information secret (a 94 % success rate), followed by 'other honest commercial practice' (55 % success rate). Most proceedings appear to have involved a concurrent claim of unfair competition within the same proceedings (even multiple), with the unfair competition claim succeeding on 11 occasions (a 24 % success rate).

### **Trends in measures**

No information is noted on provisional measures being granted. Consistent with the prevalence of administrative cases, administrative fines were the dominant measure granted on merits, being granted on 10 occasions and denied in 48 claims (a grant rate of 17 %). Two cases resulted in damages, with the amounts identified as BGN 3 000 and BGN 20 400 (approximately EUR 1 530 and EUR 10 400).

## Overall assessment

In contrast with the EU-wide trend, the primary fora for trade secrets litigation in Bulgaria are specialised competition fora, enforcing against infringement as administrative proceedings. The appeal rate appears to be slightly higher (50 % v 46 % EU-wide), while the claim success rate appears to be substantially lower (7 % v 27 % EU-wide).

### 3.3 France

Total proceedings reported:	52
Appeal rate:	76 %
Infringement claim success rate:	24 %

#### Legal forum of proceedings

Most French proceedings are categorised as having taken place before an appeal court (67 %), and 23 % before a general civil court. This observation is skewed because lower court judgements are often not readily available in France, and therefore appeal cases are overrepresented in the dataset. Virtually all cases were categorised as civil cases.

#### Party profiles

56 % of claimants were categorised as private entities whose economic nature/size is unknown, 11 % were SMEs, 9 % large corporations, and 23 % microenterprises. 51 % of defendants were categorised as private entities whose economic nature/size is unknown, 20 % as microenterprises, 8% as SMEs, and 13 % as large corporations. In terms of claimant-defendant relationships, 39 % were categorised as no known contractual relationship, with only 14 % as former employment, and 33 % as a business partnership (notably higher than the EU-wide trend). In terms of geographical relationships, 77 % of relationships involved parties that were all in France, with 13 % involving at least one party in another Member State. Notably, 5 proceedings involved non-EU parties.

#### Technical and economic trends

51 % of trade secrets were characterised as technical information, while 46 % were characterised as commercial information. The most common types of information were manufacturing processes (26 %), formulas or recipes (14 %), and managerial information (20 %). French trade secrets litigation appears generally to involve more technical information than the wider EU trend. In line with

this observation, the manufacturing sector dominated the types of economic activities identified (37 %).

### **Legal proceedings**

The types of infringement claims made are diverse, with use based on unauthorised acquisition being the most common (27 %). The most commonly invoked defences were that no trade secret exists as the information is generally known, followed by invalid NDAs and ‘other honest commercial practices’. Notably, the defence of the exercise of workers’ rights was (unsuccessfully) raised in a few instances (which is not common in the wider trend). There were 17 instances of a bad faith counterclaim being raised, with these being successful on 3 occasions. The most commonly observed concurrent non-trade secret claims were breach of contract law and unfair competition.

### **Trends in measures**

Little information is available on the grant of provisional measures, but in the few instances in which it is, the measures relate to the presentation or preservation of evidence. The most commonly granted measure on merits was an order for the cessation of use of the information. 11 cases involved the grant of damages where the amount is specifically reported, ranging from EUR 5 000 to EUR 1 431 460.

### **Overall assessment**

In contrast with the EU-wide trend, the appeal rate appears very high (76 % v 46 % EU-wide), but this is due to limitations in accessing lower court judgements, and so non-appealed lower instances are underrepresented. The claim success rate appears generally on a par with the wider trend (24 % v 27 % EU-wide).

## **3.4 Germany**

Total proceedings reported:	39
Appeal rate:	53 %
Infringement claim success rate:	19 %

### **Legal forum of proceedings**

39 % of proceedings were categorised as taking place before a specialised labour court, 49 % before an appeal court, and 10 % before a general civil court. Almost all cases were categorised as civil cases, with no administrative cases and one criminal case reported.

### **Party profiles**

The vast majority of claimants (95 %) were categorised as private entities whose economic nature/size is unknown or cannot be ascertained. 42 % of defendants were categorised as private entities whose economic nature/size is unknown, 44 % as former employees, and 12 % as current employees. In terms of claimant-defendant relationships, 29 % were categorised as no known contractual relationship, 55 % as former employment, 5 % as current employment, and 8 % as a business partnership. In terms of geographical relationships, 82 % of relationships involved parties that were all in Germany, with 13 % involving at least one party in another Member State. Only two proceedings involved a non-EU party.

### **Technical and economic trends**

37 % of trade secrets were characterised as technical information, while 60 % were commercial information. The most common types of information were manufacturing processes (22 %) and commercial downstream information (25 %). The manufacturing sector strongly dominated the commercial sectors implicated in litigation (53 %), with a notable presence of professional and scientific services (17 %).

### **Legal proceedings**

Most infringement claims related to a breach of contractual constraints on use of the undisclosed information (51 %), followed by use based on unauthorised acquisition (23 %). The invoked defences were diverse, the most common being that no trade secret exists as no reasonable steps were taken and the exercise of workers' rights. Notably, there were a few instances of reverse engineering and independent discovery being invoked as defences. No information is noted on bad faith counterclaims being raised. Observed concurrent non-trade secret claims were not common, but where they occurred, they were most commonly based on a breach of employment law or unfair competition.

### Trends in measures

No information is available on the granting of provisional measures. The most commonly granted measure on the merits was an order for the cessation of use of the information. Notably, orders for the destruction of documents were granted on two occasions. Damages were granted on only five occasions, with the amount explicitly reported in only one case (EUR 166 677.36).

### Overall assessment

The appeal rate appears higher than the EU-wide trend (53 % v 46 % EU-wide), though the German data is skewed heavily by appeal judgements without corresponding first-instance judgements. The claim success rate appears notably lower than the EU-wide trend (19 % v 27 %). Generally, German litigation was notable for its evident labour/employment dimension, due to the use of specialised labour courts.

## 3.5 Italy

Total proceedings reported:	151
Appeal rate:	11 %
Infringement claim success rate:	41 %

### Legal forum of proceedings

The vast majority of Italian proceedings are brought before a specialised IP court (92 %) and are characterised as civil cases. Notably, 4 % of proceedings were characterised as criminal.

### Party profiles

In terms of claimant profiles, 46 % were characterised as SMEs, 20 % as micro-enterprises, 21 % as large corporations, and the rest as private entities of unknown size. 35 % of defendants were characterised as former employees, 24 % as SMEs and 19 % microenterprises. 45 % of claimant-defendant relationships were characterised as no known contractual relationship, 26 % as former employment, and 24 % as business partnerships. In 87 % of proceedings, all parties were situated in Italy, with 8 % of cases involving an intra-EU dimension. A number of anomalous proceedings involved parties outside the EU (5 %).

### **Technical and economic trends**

53 % of trade secrets were characterised as commercial information, and 40 % as technical information. The highest occurrences were downstream commercial information (34 %) and manufacturing processes (24 %), with 7 % of information characterised as prototypes or unreleased product designs. The most commonly implicated commercial sector was manufacturing (59 %), followed by financial and insurance (10 %). Information was generally not available to ascertain the exact sub-sector of manufacturing implicated, but in several instances where it was, 'manufacture of machinery and equipment' was identified.

### **Legal proceedings**

54 % of reported claims were for use based on unauthorised acquisition. Disclosure based on breach of a confidentiality agreement, breach of contractual constraint, and 'acquisition: other practice' each accounted for 10 % of reported claims. Of the identified and itemised defences, the most commonly raised defences were that no trade secret exists because the information is generally known (57 identified invocations) or that reasonable steps were not taken to keep the information secret (45 invocations). There were 31 occurrences where the defence of the exercise of workers' rights was invoked, which is significantly more prevalent than the wider trend, though this defence was successful on only 7 occasions. On 17 occasions, a bad faith counterclaim was identified as being explicitly made, but was successful on only 2 occasions. A very high proportion of proceedings appeared to involve a concurrent claim of unfair competition within the same proceedings, with the unfair competition claim raised on 92 occasions within the 151 proceedings. Unfair competition claims appeared to have a success rate of 41 %, which is notably on a par with the general success rate of primary trade secret claims.

### **Trends in measures**

There were 92 occurrences of provisional measures, where the most commonly identified measure was an order to present specific evidence. The most commonly granted measure on the merits of proceedings was the cessation of use of the protected information (granted on 26 occasions and denied on 24). Notably, there were 25 occasions where sanctions were granted for post-decision non-compliance. At least 19 cases resulted in damages, with an average quantum of approximately EUR 462 000 (across 13 cases where the amounts are identified). In four cases, damage amounts over EUR 0.5 million were granted, with the highest sum being EUR 2.5 million.



## Overall assessment

In contrast with the EU-wide trend, in which most proceedings are before a general civil court or an appeal court, the primary fora for trade secrets litigation in Italy are specialised IP courts. Italy also has a notably high volume of proceedings generally, with a notable tendency for concurrent unfair competition claims. The appeal rate appears to be significantly lower (11 % v 46 % EU-wide), possibly because Italy is one of the few Member States where lower court judgements are more easily accessible. Compared to the wider trend, the claim success rate appears to be substantially higher (41 % v 27 % EU-wide).

### 3.6 Netherlands

Total proceedings reported:	36
Appeal rate:	14%
Infringement claim success rate:	23%

#### Legal forum of proceedings

Of the reported proceedings, the majority (75 %) were before a general civil court, with 22 % before a specialised IP court. All proceedings except one criminal case were categorised as civil cases.

#### Party profiles

In terms of claimant profiles, 38 % were characterised as SMEs, 13 % as micro-enterprises, and 13 % as large corporations. As for defendants, 32 % were private undertakings of unknown size, 20 % SMEs, 9 % micro-enterprises, and 21 % former employees. In terms of identified contractual relationships, 37% were described as former employment, 37 % as a business partnership, and 23 % as no known contractual relationship. In 53 % of identified geographical relationships, all parties were situated in the Netherlands. In 21 % of relationships, at least one party was in another Member State, with the rest (approximately 26 %) involving at least one non-EU based party.

#### Technical and economic trends

37 % of trade secret were characterised as commercial information, and 53 % as technical information. The highest occurrences were manufacturing processes (36 %) and downstream commercial information (23 %). The commercial sectors implicated were diverse, with the most

prevalent sectors being manufacturing (29 %), transport and storage (14 %), and professional/scientific services (14 %).

### **Legal proceedings**

27 % of claims were for use based on unauthorised acquisition, 27 % for breach of a confidentiality agreement, and 12 % for 'unauthorised acquisition: other practice'. Of the identified and itemised defences, the most commonly raised defence was that no trade secret exists because the information has no commercial value (invoked in 12 proceedings and successful in 9), and that reasonable steps were not taken to keep the information secret (invoked in 11 proceedings and successful in 5). There were two successful reverse engineering defences and one successful independent discovery defence. In no proceeding was a bad faith counterclaim identified as being explicitly made. Very few proceedings appear to involve a concurrent claim of unfair competition within the same proceedings (there were only 2 unsuccessful such claims). The most common concurrent claims were breach of contract law (2 successful claims and 11 unsuccessful), and copyright infringement (2 successful claims and 8 unsuccessful).

### **Trends in measures**

Generally, little information is noted on grant of provisional measures, though there are small number of noted orders for the presentation of evidence or disclosure of relevant information. The most common granted measure was for damages where the basis is not specific (granted on 8 occasions, denied on 4). Information is not available on the quantum of damages in these cases as the amounts are determined in later proceedings.

### **Overall assessment**

The high proportion of intra-EU party relationships (21 %) and extra-EU party relationships (26 %) suggest that trade secrets litigation in the Netherlands has a much more significant international dimension compared to other Member States and the overall EU-wide trend. In terms of the types of trade secrets subject to litigation, the Netherlands stands out in that technical subject matter is more prevalent than commercial subject matter. In contrast with the EU-wide trend, the appeal rate appears to be lower (14 % v 46 % EU-wide), while the claim success rate is roughly on a par (23 % v 27 % EU-wide).

### 3.7 Poland

Total proceedings reported	38
Appeal rate:	45 %
Infringement claim success rate:	14 %

#### Legal forum of proceedings

Most proceedings were brought before a general civil court (53 %), with 21 % brought before a specialised labour court. All proceedings were categorised as civil cases, except for 3 criminal cases. Due to the high degree of anonymisation in Polish judgements, it is not possible to map connected judgements to accurately determine the number of unique cases.

#### Party profiles

Due to the high degree of judgement anonymisation, claimants' economic profiles could not be deduced, and all were categorised as 'unknown private'. 60 % of defendants were categorised as former employees, and 46 % were categorised as private undertakings of unknown size. 64 % of claimant-defendant relationships were categorised as former employment. There were no cases that described a business relationship between the claimants and defendants. The vast majority of proceedings (97 %) involved parties all situated in Poland, with only one proceeding involving a party in another EU Member State.

#### Technical and economic trends

Most trade secrets were characterised as commercial information (90 %), and only 7 % as technical information. The highest occurrences were downstream commercial information (39 %) and financial information (27 %). The economic sectors implicated were diverse, with the most prevalent being transport and storage (24 %) and manufacturing (12 %).

#### Legal proceedings

74 % of reported claims were based on a breach of contractual constraints on use. Of the identified and itemised defences, the most commonly raised were that no trade secret exists because the information is generally known (16 identified invocations, successful in 14), or that reasonable steps were not taken to keep the information secret (11 invocations, successful in all 11). In no proceeding was a bad faith counterclaim identified as being explicitly made. Very few proceedings were reported to involve other concurrent claims.

### Trends in measures

Little information is available on the grant of provisional measures. On four occasions, explicit measures on the merits could be identified as having been granted, which in all cases were some form of damages. In three of these cases, the quantum of damages could be ascertained: PLN 5 000, PLN 15 000, and PLN 230 000 respectively (approximately EUR 1 050, EUR 3 150, and EUR 48 300).

### Overall assessment

Generally, analysis of trade secrets litigation trends in Poland is significantly limited by the highly anonymised nature of the published judgements. The appeal rate is on a par with the EU-wide trend (45 % v 46 % EU-wide), while the claim success rate appears to be lower (14 % v 27 % EU-wide). Polish trade secrets litigation also rarely involves technical information.

## 3.8 Romania

Total proceedings reported:	45
Appeal rate:	50 %
Infringement claim success rate:	18 %

### Legal forum of proceedings

76 % of proceedings were categorised as being before a general civil court, and 13% before an appeal court. All cases were categorised as civil cases, with no administrative or criminal cases observed.

### Party profiles

Most claimants (63 %) were categorised as SMEs, and 33 % as microenterprises. 57 % of defendants were categorised as former employees, 17 % as SMEs, and 24% as micro-enterprises. In terms of claimant-defendant relationships, the majority (84 %) were categorised as former employment, and only 4 % as a business partnership. All proceedings except one involved parties that were all based in Romania.

### Technical and economic trends

18 % of trade secrets were characterised as technical information, while 82 % were commercial information. The most common types of information were downstream commercial information (66 %), manufacturing processes (16 %) and financial information (8 %). The commercial sectors implicated in litigation were very diverse, with manufacturing accounting for only 16 %, and a notable presence of food and accommodation (14 %) and administrative and support services (18 %).

### Legal proceedings

The most common infringement claims were categorised as ‘acquisition: other practice’ (43 %) and breach of confidentiality agreements (43 %). In terms of defences invoked, the most common was that the allegedly infringing action was consistent with ‘other honest commercial practice’ (invoked on 27 occasions, successful on 18). Other common defences were that no trade secret exists as the information is generally known and that no reasonable steps were taken to keep the information secret. Little information was observed on concurrent non-trade secret claims, but on six occasions unfair competition claims were also raised (successful on five occasions).

### Trends in measures

No information is available on the grant of provisional measures. The most commonly granted measure on the merits was an order for the cessation of use of the information. Damages were granted on four occasions in amounts from RON 12 000 (approximately EUR 2 400) to RON 50 000.

### Overall assessment

The Romanian litigation trends demonstrate an appeal rate roughly in line with the wider observed trend (50 % v 46 % EU-wide), while the claim success rate is notably lower (18 % v 27 % EU-wide). Romania stands out for the low presence of technical information and the relatively low involvement of the manufacturing sector.

## 3.9 Spain

Total proceedings reported:	50
Appeal rate:	72 %
Infringement claim success rate:	20 %

### **Legal forum of proceedings**

31% of proceedings were categorised as being before a general civil court, and 57 % before an appeal court. Of the 50 reported proceedings, 38 were categorised as civil cases and 12 as criminal cases.

### **Party profiles**

Most claimants (51 %) were categorised as private entities whose economic size is unknown, while 35 % were SMEs and 12 % were large corporations. 26 % of defendants were categorised as private entities whose economic nature/size is unknown, 40 % as former employees, and 11 % as SMEs. In terms of claimant-defendant relationships, 49 % were categorised as former employment, 28 % as 'other contractual', and 9 % as a business partnership. 91 % of geographical relationships were categorised as all parties being based in Spain, with 4 proceedings involving parties based in other Member States.

### **Technical and economic trends**

40 % of trade secrets were characterised as technical information, and 52 % as commercial information. The most common types of information were downstream commercial information (29 %), manufacturing processes (20 %) and managerial information (13 %). In terms of the commercial sectors implicated in litigation, manufacturing dominated at 48 %.

### **Legal proceedings**

The most common infringement claims made were based on breach of a confidentiality agreement (43 %) and breach of contractual constraints (20 %). On at least 25 occasions, a concurrent unfair competition claim was observed, with these being successful on 8 occasions.

### **Trends in measures**

No information is available on the grant of provisional measures. In terms of measures granted on merits, orders for the cessation of use of the information were granted on six occasions, destruction of documents on three occasions, removal of infringing goods from distribution on two occasions, and destruction of infringing goods on one occasion. Damages were granted on nine occasions, with information on the amount being reported in only six; four cases resulted in modest damages ranging from EUR 1 000 to EUR 25 241, while one case resulted in damages of EUR 5 million, one of the highest amounts observed throughout the EU during the study period. In one case, damages were reported as the sum of EUR 3 000 (moral damages), EUR 4 541 (fixed investigation costs), and

EUR 17-20 for each infringing product (the exact number of each type of infringing product had not yet been reported).

### Overall assessment

The Spanish appeal rate appears very high (72 % v 46 % EU-wide), although this is probably due to limitations in accessing lower court judgements and therefore an overrepresentation of appeal judgements in the dataset. The infringement claim success rate is only slightly lower than the wider trend (20 % v 27 % EU-wide). Most notably, Spain stands out as anomalous in terms of its relatively high incidence of criminal cases, which are relatively uncommon in other Member States.

### 3.10 Sweden

Total proceedings reported:	28
Appeal rate:	87 %
Infringement claim success rate:	22 %

### Legal forum of proceedings

39 % of proceedings were categorised as being before a specialised IP court, 39 % before a specialised labour court, and 14 % before general civil courts. Almost all proceedings were categorised as civil cases, except for two criminal proceedings.

### Party profiles

The vast majority of claimants (89 %) were categorised as private entities whose economic size is unknown, while 8 % were SMEs. 60 % of defendants were categorised as private entities whose economic nature/size is unknown, and 22 % as former employees. In terms of claimant-defendant relationships, 61 % were categorised as former employment, and 32 % as no known contractual relationship. 86 % of geographical relationships were categorised as all parties being based in Sweden, with four proceedings involving at least one non-EU party.

### Technical and economic trends

36 % of trade secrets were characterised as technical information, while 58 % were characterised as commercial information. Data was generally not available to further identify the specific types of information involved in the disputes. In terms of the commercial sectors implicated in litigation,

Sweden contrasts with the EU-wide trend in the relative absence of manufacturing. The most common sectors were wholesale and retail services (35 %), professional and scientific services (23 %), and health and social work (15 %).

### **Legal proceedings**

Information is not available on the exact nature of the claims made in relation to the pre-defined reporting categories. Little information is available on defences raised and concurrent non-trade-secret claims.

### **Trends in measures**

Few proceedings involved the grant of provisional measures, though there were four instances of orders to disclose information. In terms of measures granted on the merits, there were six proceedings that resulted in the grant of damages (though the amounts were not specified), and one proceeding that resulted in a criminal fine.

### **Overall assessment**

The Swedish appeal rate appears very high (87 % vs 46 % EU-wide), although this is probably due to limitations in accessing lower court judgements and therefore an overrepresentation of appeal judgements in the dataset. The infringement claim success rate is only slightly lower than the wider trend (22 % vs 27 % EU-wide). Generally, Swedish judgements do not allow many litigation details to be easily identified (in terms of the data reporting process used in this study).



## Part II: Qualitative Analysis

This part of the report aims to shed light on trade secrets litigation trends from a qualitative and theoretical point of view. The analysis builds on the insights in Part I (the quantitative analysis), and focuses on specific aspects of trade secrets litigation and the provisions of the Trade Secrets Directive. It is also based on insights into litigation trends emerging from the jurisprudence of Member States, as well as on the analysis of the key cases that are reported and commented on in Part III of this report.

In particular, this section will focus on four specific themes of the Trade Secrets Directive: (i) the definition of ‘trade secret’ (Article 2(1)), (ii) the notion of the unlawful acquisition, use and disclosure of trade secrets (Article 4), (iii) provisional and precautionary measures (Article 10) and injunctive and corrective measures (Article 12), and (iv) proportionality (Articles 7, 11, and 13). These themes are the focus of the analysis, as they cumulatively represent the main substantive provisions of the Directive. Under these subsections, key case-law developments and issues are identified that should be subject to continuous monitoring, as they have important implications for the effective harmonisation of trade secrets law.

### 1 Definition of ‘trade secret’

Prior to the adoption of the Directive, many Member States did not have a formal legal definition of ‘trade secret’<sup>(21)</sup>. As summarised in the 2018 Baseline Report, there was significant divergence between Member States in this regard: some had a formal definition set out the national civil code, commercial code, or other legal instrument (such as unfair competition law); while others had a definition of ‘trade secrets’ that emerged through case-law (in some instances concurrently with

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<sup>(21)</sup> Recital 6.

statutory definitions)<sup>(22)</sup>. Therefore, a coherent definition is a key starting point for the harmonisation of trade secret law within the EU. Accordingly, Article 2(1) of the Directive gives the definition below.

Article 2: Definitions

For the purposes of this Directive, the following definitions apply:

(1) 'trade secret' means information which meets all of the following requirements:

(a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, to persons within the circles that normally deal with the kind of information in question;

(b) it has commercial value because it is secret;

(c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

...

This definition mirrors the criteria for undisclosed information set out in Article 39(2) of the Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPs Agreement). This definition is intended to cover 'know-how, business information and technological information where there is both a legitimate interest in keeping them confidential and a legitimate expectation that such confidentiality will be preserved'<sup>(23)</sup>. It is, however, intended to exclude 'trivial information and the experience and skills gained by employees in the normal course of their employment, and also excludes information which is generally known among, or is readily accessible to, persons within the circles that normally deal with the kind of information in question'<sup>(24)</sup>.

While jurisprudential developments have been observed that suggest interpretations of the definition of 'trade secrets' are becoming more uniform across the EU, this process has been occurring both pre-Directive and post-Directive. An interesting example is an Estonian Supreme Court Case in which the court noted that, although the proceedings began before the transposition of the Directive,

<sup>(22)</sup> 2018 Baseline Report, Annex II, p 412.

<sup>(23)</sup> Recital 14.

<sup>(24)</sup> Ibid.

the definition in Article 2(1) of the Directive is essentially identical to that in Article 39(2) of the TRIPs Agreement, which had already been used as a basis to define the concept of trade secrets in Estonian jurisprudence<sup>(25)</sup>. This example shows that implementation of the Directive can be seen as further facilitating a process of (partial) coordination that began, at least in some Member States, through the TRIPs Agreement.

The matter of satisfying this definition of ‘trade secret’ nevertheless clearly remains a key issue in trade secrets litigation. As observed in Part I of this report, the most common defences in litigation proceedings are that the claimant failed to take reasonable steps to protect the information or that the information is generally known.

## 1.1 Secrecy of information

The first requirement for meeting the definition of a trade secret is that the information is kept ‘secret’. If the information is well known or generally accessible to persons within the circles that normally deal with such information, then this criterion is not met.

Assessment of the secrecy requirement can be challenging where the supposed trade secret involves an amalgamation of information that is complex and of which some component elements may be publicly accessible, or ascertainable through reverse engineering or accepted commercial practices. This issue relates to the qualification of the information ‘as a body or in the precise configuration and assembly of its components’, which is understood as distinct from the information components or elements themselves.

One example of such subject matter is ‘customer/client lists’. It may be that information about the specific clients of an undertaking can be easily determined (e.g. from online social media sources). This means that client lists may appear not to meet the requirements for trade secret protection, because they are not secret. However, it is necessary to make a distinction between individual client data and the client list as a ‘body’ in a ‘precise configuration’, which consists of some individual components that are publicly accessible and some that are not. As an illustration, these issues were raised in a Belgian case heard by the Business Court of Brussels<sup>(26)</sup>. In this case, the claims made

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<sup>(25)</sup> Part III: Case 5 (Estonia: Criminal Acquittal: 15 May 2020).

<sup>(26)</sup> Part III: Case 3 (Belgium: Customer Lists, 29 July 2020).

were unsuccessful, as the information (a subset of clients) was deemed to have been acquired lawfully by the former employee, who was able to reconstruct the list from their personal knowledge and from publicly available information. A useful interpretive concept raised in this case was that, although there was lawful acquisition, the client list was still protectable as a trade secret, as the secrecy requirement should be assessed from the point of view of the average person in the respective commercial sector (as opposed to that of a specific former employee).

Another example of this challenge was raised in a German case before the Higher Regional Court of Düsseldorf regarding the protectability of ‘technical CAD drawings’<sup>(27)</sup>. In this case, the Court held that technical drawings constituted trade secrets, even if some (but not all) aspects of that information could be ascertained through reverse engineering. A leading Austrian Supreme Court of Justice case provides guidance on this issue of ‘complex information’ as it provides useful interpretations of the terms ‘readily accessible’, and ‘as a body or in the precise configuration and assembly of its components’<sup>(28)</sup>. Regarding both terms, the Court refers to the expenditure of time or resources that might be necessary for a third party to obtain the information independently.

The analysis of the secrecy requirement should therefore be further monitored, particularly as it relates to complex information, and the interpretive standards that distinguish between the trade secret as a body of information distinct from its individual components. A key issue is how ‘data’ might be protected by trade secret law, particularly when these data are recorded abstractions of naturally occurring semantic information (e.g. data collected from sensors). When discussing the relationship between ‘big data’ and trade secrets, it is important to distinguish the concept of information (data on the semantic level) from the signs in which it is encoded (data on the syntactic level)<sup>(29)</sup>. This is particularly relevant for Internet of Things (IoT) applications<sup>(30)</sup>. How the secrecy requirement is interpreted in such applications, and the doctrines for distinguishing between naturally occurring information accessible to the public and protectable secret information, are key areas for

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<sup>(27)</sup> Part III: Case 10 (Germany: New TS Provisions, 11 March 2021).

<sup>(28)</sup> Part III: Case 1 (Austria: New TS Provisions, 26 January 2021).

<sup>(29)</sup> Drexl, J. (2018). Data access and control in the era of connected devices. *Report for BEUC (The European Consumer Organisation)*, p. 92.

<sup>(30)</sup> For a discussion of how trade secret protection might apply to data generated through ‘Internet of Things’ applications, see Noto La Diega, G., & Sappa, C. (2020). The Internet of Things at the Intersection of Data Protection and Trade Secrets. Non-Conventional Paths to Counter Data Appropriation and Empower Consumers. *European Journal of Consumer Law*, Volume 2020, Issue 3, pp. 419-458; more generally, for a discussion of the role of trade secrets in the data economy, see Aplin, T. (2017). Trading data in the digital economy: trade secrets perspective. In *Trading Data in the Digital Economy: Legal Concepts and Tools* (pp. 59-72). Nomos Publishing.

monitoring future legal developments<sup>(31)</sup>. These interpretations would provide clarity on the role trade secrets law plays in the data economy and can create the certainties necessary to further encourage investment in large-scale data collection and commercialisation.

An additional conceptual issue to monitor is future development dealing with the interface between the secrecy requirement and the notion of worker's experience. Recital 14 explicitly states that the definition of trade secret excludes not only trivial information, but also 'the experience and skills gained by employees in the normal course of their employment'. Furthermore, Article 1(3) sets out that the Directive should not be used as grounds for limiting employee mobility, and in particular 'limiting employees' use of experience and skills honestly acquired in the normal course of their employment'. Therefore, information may not be fully protected if it becomes part of employees' honestly acquired experience and skills, even if that information is not 'readily accessible to persons within the circles that normally deal with the kind of information in question'. This implies that it may be possible for some information to be a trade secret initially, but for it to lose this status over time after it is transformed into employees' experience and skills, although the information is not 'trivial' and these employees are only a minor subset of the circle of persons who normally deal with such information. The effect is that the development of such experience and skills is akin to legitimate acquisition of the information, after which subsequent use is understood to be legitimate by default (particularly in the absence of a contractual restraint).

The challenge that emerges is that this notion may create a tension in analysing the 'secrecy' requirement from the perspective of the average person in the respective commercial sector (as opposed to a specific former employee), as mentioned above. To reconcile these two concepts, one approach may be the interpretation that 'legitimately acquired employee skills' do not definitively undermine the existence of a trade secret, but rather limit the enforceability of that trade secret against those (former) employees (although such an interpretation would be at odds with Recital 14's explicit use of the word 'excludes'). Nevertheless, the legitimate use of the information by those (former) employees may subsequently prejudice the secret status of the information among the wider circles and undermine the qualification of the information as a trade secret altogether. In this specific context, there may be a reason to differentiate between enforcement against a former employee for

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<sup>(31)</sup> Related to this issue is the question of identifying the trade secret holder (or holders) when secret information is generated through data-driven applications across multiple users. For data generated through the use of consumer devices, there is a possible ambiguity in identifying the trade secret holder, as the 'natural or legal person controlling the trade secret' may be the device manufacturer, the device user, or both in conjunction (Drexl 2018, p. 95).

using the information and enforcement against someone who wrongfully discloses a trade secret without authorisation. The notion of what constitutes ‘employee experience and skills’ can therefore be a significant constraint on the scope of trade secrets, and case-law developments on this matter may have significant implications for how firms incorporate employee training and retention processes into their trade secrets management strategies<sup>(32)</sup>. This issue is partially raised in the abovementioned Estonian case, in which the Estonian Supreme Court determined that no trade secret existed, in part because the information was used in the capacity of the former employees’ long-term work experience<sup>(33)</sup>.

## 1.2 Commercial value

The second requirement for meeting the definition of a trade secret is that the information ‘has commercial value because it is secret’. Not only must the information have commercial value, but there should be a causal link between this value and the information’s secrecy. Importantly, Recital 14 suggests that this value does not need to be ‘actual’, but can also be ‘potential’. While the Directive does not provide direct guidance on any particular threshold to be met for ‘commercial value’, Recital 14 also implies that one approach to assessing commercial value is by performing a harm-based analysis, and specifically states that ‘such know-how or information should be considered to have a commercial value, for example, where its unlawful acquisition, use or disclosure is likely to harm the interests of the person lawfully controlling it, in that it undermines that person’s scientific and technical potential, business or financial interests, strategic positions or ability to compete’.

The concept of a ‘harm test’ for the commercial value requirement creates a conceptual limit on the definition of a trade secret that stresses the causal link between secrecy and value. Under such a test, the issue is not whether the information offers direct value to its holder, but rather whether the secret nature of the information confers value upon it. Information that is disclosed without authorisation may be of strategic value to the holder, but if that disclosure does not result in harm, then the information may not have ‘commercial value’ in the sense of qualifying as a trade secret. Implicit in this test is a differentiation between the benefits of the unauthorised action to the alleged

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<sup>(32)</sup> A policy issue related to this is the regulation of non-compete provisions in employment contracts, which is fundamentally a labour law issue that is not harmonised within the EU.

<sup>(33)</sup> Part III: Case 5 (Estonia: Criminal Acquittal, 15 May 2020).

infringer and the harm to the original information holder caused by that action. Where there is benefit to the infringer, there is often harm to the information holder, but this concurrence depends crucially on the competitive relationship between the parties. If unauthorised disclosure or use benefits the infringer, but does not necessarily harm the original information holder, then the ‘commercial value’ requirement may not be met, and the information may not qualify as a trade secret. This issue is alluded to in the abovementioned Austrian Supreme Court case, in which the Court confirmed that certain technical drawings did not meet the ‘commercial value’ requirement in the light of Recital 14, although the unauthorised use of the information saved the defendant about half of the working hours it would take to reproduce the designs in question<sup>(34)</sup>.

Much attention has already been given by commentators to the relationship between trade secret protection, ‘big data’, and developments in artificial intelligence technologies<sup>(35)</sup>. In addition to the abovementioned secrecy requirement, another challenge is how the ‘commercial value’ requirement might be interpreted in these fields.

On this issue, one particular Italian case provides a useful illustration. In this case, the Tribunal of Milan considered that the commercial value of the secret information derived not from the information itself, but from the way it might be processed by dynamic technologies<sup>(36)</sup>. Furthermore, the Tribunal noted that the status of the information as a potential trade secret should be assessed in relation to the configuration and combination of the dataset as a whole, and not just its individual elements in isolation. This notion is therefore not only relevant for the ‘commercial value’ requirement, but also for the ‘secrecy’ requirement, as it relates to the assessment of the degree to which secrecy is undermined by general accessibility. This approach to analysing trade secret requirements appears to suit the nature of the data economy, where added value is concentrated not in individual elements of a dataset, but rather in the process of aggregation and subsequent technological application.

Developments in how courts interpret the ‘commercial value’ requirement (and the causal link with secrecy) in relation to large datasets – particularly those which have application for artificial intelligence technologies – is therefore a key area for monitoring trade secret law. As with the ‘secrecy’ requirement, the trend appears to be that the ‘commercial value’ requirement takes an analysis of the information as a whole, as opposed to its individual component elements. These

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<sup>(34)</sup> Part III: Case 1 (Austria: New TS Provisions, 26 January 2021).

<sup>(35)</sup> See, for example, Nordberg, A. (2020). Trade secrets, big data and artificial intelligence innovation: a legal oxymoron?. In *The Harmonization and Protection of Trade Secrets in the EU* (pp. 192-218). Edward Elgar Publishing.

<sup>(36)</sup> Part III: Case 14 (Italy: Intelligent Systems Data, 14 May 2018).

developments will provide clarity on the relationship between frontier technologies and trade secret law and create the legal certainties necessary to promote further investments in the data economy<sup>(37)</sup>.

### 1.3 Reasonable steps

The requirement that a trade secret must be subject to ‘reasonable steps under the circumstances ... to keep it secret’ is notoriously one of the key aspects of trade secrets law in which interpretive guidance is often sought. The overall trend appears to be that there is no explicit consensus on what constitutes ‘reasonable steps’, and the concept is generally subject to a case-specific and holistic analysis. This flexibility might be seen as a reflection of the ‘under the circumstances’ qualification of the requirement set out in the definition. In this way, the very definition of a trade secret might be understood as encompassing a principle of proportionality, in that the standard is evaluated in light of the circumstances and capacities of the secret holder, as well as the value of the trade secret itself.

A typical example is whether a policy of access restrictions through usernames and passwords is sufficient to meet the standards for trade secret protection. On the adequacy of passwords as a reasonable step, different courts even in the same jurisdiction have made different determinations, clearly suggesting that the analysis needs to be performed on a circumstance-specific basis. What is apparent is that reasonable steps may include different combinations of organisational, technical, and legal measures that control access to and use of secret information.

As observed in Part I of this report, the defence that the ‘reasonable steps requirement was not met by the claimant’ was one of the most commonly raised defences in litigation and was successful in 59 % of instances; for approximately 23 % of infringement claims raised, the claim failed because the reasonable steps requirement was not met.

The German case-law is particularly instructive because, under the pre-Directive legal framework, information was protected when (i) it related to an enterprise, (ii) it was not obvious, (iii) the owner

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<sup>(37)</sup> A recent report prepared for the European Commission suggests that jurisprudential developments are needed to provide greater legal certainty necessary on the relationship between trade secrets and the data economy. See EISMEA (2022). *Study on the Legal Protection of Trade Secrets in the Context of the Data Economy* (GRO/SME/20/F/206). European Innovation Council and SMEs Executive Agency (EISMEA), EUR EA-09-22-449-EN-N.



had the intention to keep it secret, and (iv) the owner had an interest in doing so<sup>(38)</sup>. Following the implementation of the Directive, the subjective intentions of the trade secret holder are no longer relevant, and the holder must now objectively prove that reasonable steps were taken. Therefore, German jurisprudential developments on reasonable steps are of particular interest as indicators of general interpretive trends on the Directive's definition of a trade secret. Developments in the 'reasonable steps' requirement are well illustrated by the abovementioned leading German case<sup>(39)</sup>. In this case, the Düsseldorf Regional Court stressed that appropriate measures do not require 'optimal protection' or 'extreme security'. The court further elaborated various factors that must be taken into account in assessing the appropriateness of protection measures, namely:

1. the type of trade secret,
2. the specific circumstances of use,
3. the value of the trade secret and its development costs,
4. the nature of the information,
5. the importance for the company,
6. the size of the company,
7. the usual confidentiality measures in the company,
8. the type of labelling of the information, and
9. agreed contractual provisions with employees and business partners.

These factors were a confirmation and consolidation of the various relevant factors alluded to by German courts when applying the post-Directive trade secret law<sup>(40)</sup>. While not explicitly included in the above list, the German case-law also stresses that the costs of protection do not have to exceed the value of the secret. Therefore, the relative costs of different protection measures might be considered another assessment factor. While the above criteria are specific to the German trade secret reforms (and courts in other jurisdictions may have elaborated similar combinations of assessment factors), this list is indicative of the core principles in the case-law trend. That is to say, the adequacy or reasonableness of the protection measures should be a flexible and open requirement that follows the principle of proportionality. Nevertheless, this notion of proportionality regarding the steps taken should be understood as constrained by the exclusion of trivial information and employee experience (as per Recital 14).

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<sup>(38)</sup> Ohly, A. (2020). Germany: the Trade Secrets Protection Act of 2019. In *The Harmonization and Protection of Trade Secrets in the EU* (pp. 103-123). Edward Elgar Publishing.

<sup>(39)</sup> Part III: Case 10 (Germany: New TS Provisions, 11 March 2021).

<sup>(40)</sup> Part III: Case 11 (Germany: Customer Notes, 3 June 2020).

Because the notion of ‘reasonable steps’ is flexible, the standard will necessarily change as technology evolves. This is a major concern when it comes to how firms manage cybersecurity threats<sup>(41)</sup>. In order to preserve trade secret protection, the technical measures used by trade secret holders to maintain secrecy would need to continuously improve at speed, at least at the same pace as the technologies used by criminals engaged in industrial espionage, hacking, and digital secret theft. This issue is especially critical given the scale of the threat of cybertheft to European economic interests<sup>(42)</sup>.

It is worth noting another strand of case-law that focuses on the ‘reasonable steps’ requirement, which takes into account the conduct of the accused infringer as well as the post-incident actions of the trade secret owner. This type of analysis appears particularly relevant in the Italian case-law (which is itself remarkably large compared to other Member States). One example of this analysis is focusing on the efforts made by the alleged infringer to discover the trade secret. In this regard, ‘reasonable steps’ are measures that do not make it easy for specialists in the sector to find out the secret using reverse engineering<sup>(43)</sup>, or cause the acquisition of information to require extraordinary efforts<sup>(44)</sup>. It is expected that this line of argument will continue to be applicable, where relevant, as case-law develops following the implementation of the Directive.

This concept of the efforts or resources expended by a third party to access information was also relevant in the above discussion of whether information might be considered ‘generally known or readily accessible’. Therefore, the hypothetical (or *ex post* access) evaluation of the efforts exerted by a third party to obtain a secret provides a conceptual link between the ‘secrecy’ and ‘reasonable steps’ requirements.

Another interesting concept is that future measures (*ex post* alleged infringement) implemented by the trade secret holder might be used in assessing whether reasonable steps were taken at the point in time when the alleged infringement occurred. In one case, the Tribunal of Bologna found that the fact that a truly sophisticated security system had only been introduced subsequently to the

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<sup>(41)</sup> See EISMEA (2022), p. 41.

<sup>(42)</sup> *The scale and impact of industrial espionage and theft of trade secrets through cyber*. European Commission (prepared by PWC), December 2018.

<sup>(43)</sup> Court of Appeal of Turin, 19 May 2017

<sup>(44)</sup> Tribunal of Bologna, 13 October 2017

acquisition of the documents relevant to the case showed that the previous measures had been deficient<sup>(45)</sup>.

#### 1.4 Identification of protected information

A key trend which emerges from the collective case-law is the importance of precisely identifying the information for which trade secret protection is claimed. While ‘precise identification of the object of protection’ is not an explicit requirement for protection under Article 2 of the Directive, it seems to emerge as a jurisprudential component of the ‘reasonable steps’ requirement in certain contexts. That is to say, for undisclosed information to be protected as a trade secret, the steps taken to protect secrecy may have to be specific and targeted to the information for which protection is sought. This concept appears specifically relevant to the relationship between confidentiality agreements and the requirement to take ‘reasonable steps under the circumstances’. The trend appears to be that contractual measures broadly applied to the entire set of information that an employee has access to may not meet the threshold of ‘reasonableness’.

This concept emerges in various ways across the case-law of different Member States. For example, this is the basis for the dismissal of the charges in a particular Estonian criminal case<sup>(46)</sup>. In this case, the Estonian Supreme Court ruled that, since the employer did not specify exactly what information qualified as a trade secret, but rather declared all company information confidential, the former employees were not liable for unlawful trade secret use and disclosure. Furthermore, in another leading German case, the Düsseldorf Labour Court found that ‘[an] agreement which simply declares all matters and processes which become known in the course of the activity to be subject to secrecy and which also expressly refers to such processes which are not business secrets is insufficient.’<sup>(47)</sup> Similarly, the Hungarian Supreme Court denied trade secret protection to information that was described only in an abstract and general manner in a subcontractor agreement<sup>(48)</sup>. The Italian Supreme Court has also confirmed that, for a measure to be considered appropriate, it is implied that persons who have access to the information assumed to be confidential must be made aware of the holder's intention to keep it secret<sup>(49)</sup>. Explicit intention (and its recognisability by

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<sup>(45)</sup> Tribunal of Bologna, 24 April 2017

<sup>(46)</sup> Part III: Case 5 (Estonia: Criminal Acquittal: 15 May 2020).

<sup>(47)</sup> Part III: Case 11 (Germany: Customer Notes, 3 June 2020).

<sup>(48)</sup> Hungarian Supreme Court Gfv.VII.30.179/2020/4 (21 January 2021).

<sup>(49)</sup> Italian Supreme Court of Cassation, No 34337 (27 December 2019).

restricted parties) is therefore not enough in itself to confer protection, but it can be an implicit aspect of the requirements for meeting the definition of a trade secret.

Another useful illustration of this principle can be seen in a key Bulgarian case<sup>(50)</sup>. In this case, the Bulgarian Commission for Protection of Competition (the agency in Bulgaria that undertakes the administrative enforcement of trade secrets) concluded that the trade secret owner must (a) identify in advance the concrete, individualised information that constitutes trade secret (which cannot be simply identified as the entirety of the commercial data in the company's possession); and (b) take appropriate measures to restrict access to this information. Therefore, the appropriateness of the steps taken requires not only that they are reasonable to prevent unauthorised access, but that they should include explicit identification of the objects for which protection is sought. As a result, confidentially agreements that are uniform, general, and not specifically drafted for each employee are not considered appropriate measures.

Consequently, the best practice appears to be that confidential agreements should precisely identify the information that is subject to the claimed trade secret protection. The result is in effect, a delineation between the information that is generally considered confidential by the employer (and may be protected through contractual provisions) and the subset of information that is considered trade secrets (and is protected by trade secret law).

However, this trend, which focuses on clarity of intentions and explicit contractual provisions, is not the only path to protection. A notable alternative path is illustrated in a Belgian lower court case, in which the Business Court of Antwerp found that, even in the absence of an express contractual obligation, there was an implied duty of good faith in the contractual relationship between a company and an external consultant<sup>(51)</sup>. However, the alleged infringer was not an employee, but an external consultant, so this finding is very context-specific. What this illustrates is that, while contractual provisions are the most straightforward way to define protectable information, other context-specific commercial practices may satisfy the requirements for trade secret protection before the court.

Alternative definitions of confidential information may emerge, more generally, in relation to private contracts such as non-disclosure agreements (NDAs) and confidentiality agreements, where parties may use their contractual freedom to define the boundaries of protected information. These

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<sup>(50)</sup> Part III: Case 4 (Bulgaria: Confidentiality Obligations, 10 April 2018).

<sup>(51)</sup> Part III: Case 4 (Belgium: Implied Duty, 9 May 2019).

agreements may also be governed by non-EU law while falling under the jurisdiction of an EU Member State. This is illustrated in a French Supreme Court case in which French judges, upholding the decision of an arbitration panel, accepted an interpretation of ‘confidential information’ based on hermeneutic principles found in Swiss private law doctrine<sup>(52)</sup>. Under this interpretation, absent a clear intention of the parties, a confidentiality agreement cannot be interpreted as covering information and know-how that is new to one of the parties but is not secret in an objective sense, as it is part of the public domain.

This concept of precise identification of the information, and its relationship with the criterion of ‘reasonable steps under the circumstances’, is therefore one of the most important legal trends to emerge from the post-Directive case-law<sup>(53)</sup>.

Finally, in the context of the EU law on competition rules as applied to technology transfer agreements, the definition of ‘know-how’ refers to both a secrecy requirement and the concept of specific identification<sup>(54)</sup>. In one particularly interesting French case, the Paris Court of Appeal upheld the view of the parties that, in the absence of a statutory definition of know-how, the definition of know-how in the EU Technology Transfer Regulation should be used<sup>(55)</sup>. The outcome of this case suggests that the secrecy requirement in the definition of know-how under the Regulation would probably be interpreted in a similar manner as the secrecy requirement under the Trade Secret Directive (although the Regulation’s definition of know-how does not contain a corresponding ‘reasonable steps’ requirement). Whether there may be further interfaces between the Union law’s definitions of ‘know-how’ and ‘trade secret’ is also a relevant legal question to monitor for future developments.

## 2 Unlawful acts

In addition to the very definition of trade secret, another key motivation for the Directive was the need to introduce a harmonised definition of the ‘unlawful acquisition, use or disclosure of a trade secret’.

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<sup>(52)</sup> Part III: Case 9 (France: Arbitration Between Non-EU Parties, 15 September 2021).

<sup>(53)</sup> The issue of identification of the object of sought protection is also discussed in Section 4.2 of this report.

<sup>(54)</sup> Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements, OJ L 93, 28.3.2014, p. 17-23.

<sup>(55)</sup> Part III: Case 9 (France: Arbitration Between Non-EU Parties, 15 September 2021).

In particular, before the Directive, there were major differences between Member States regarding the treatment of third parties who initially acquire a trade secret in good faith, but subsequently learn of their unlawful acquisition by another party<sup>(56)</sup>. Accordingly, Article 4 (Unlawful acquisition, use and disclosure of trade secrets) sets out the various acts that constitute trade secret infringement.

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<sup>(56)</sup> Recital 6.

Article 4: Unlawful acquisition, use and disclosure of trade secrets

1. Member States shall ensure that trade secret holders are entitled to apply for the measures, procedures and remedies provided for in this Directive in order to prevent, or obtain redress for, the unlawful acquisition, use or disclosure of their trade secret.
2. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful, whenever carried out by:
  - (a) unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;
  - (b) any other conduct which, under the circumstances, is considered contrary to honest commercial practices.
3. The use or disclosure of a trade secret shall be considered unlawful whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
  - (a) having acquired the trade secret unlawfully;
  - (b) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret;
  - (c) being in breach of a contractual or any other duty to limit the use of the trade secret.
4. The acquisition, use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of paragraph 3.
5. The production, offering or placing on the market of infringing goods, or the importation, export or storage of infringing goods for those purposes, shall also be considered an unlawful use of a trade secret where the person carrying out such activities knew, or ought, under the circumstances, to have known that the trade secret was used unlawfully within the meaning of paragraph 3.

The structure and effect of Article 4 has been described as creating a ‘cascade of infringing acts’. These provisions link together various discrete sequential actions, while creating separate causes of action for infringement at each stage. Consider the following hypothetical example: (i) a third party unlawfully accesses and obtains the trade secret of a company (unlawful acquisition); (ii) that party then discloses this trade secret to a competing company (unlawful disclosure); (iii) the competing company negligently uses the trade secret despite suspicions that it was originally acquired unlawfully (unlawful use with constructive knowledge); then (iv) the competing company uses the trade secret to produce infringing goods which are placed on the market. Under the structure of Article 4, each of these stages amounts to a separate trade secret infringement. A visual representation of this cascading liability is presented below.

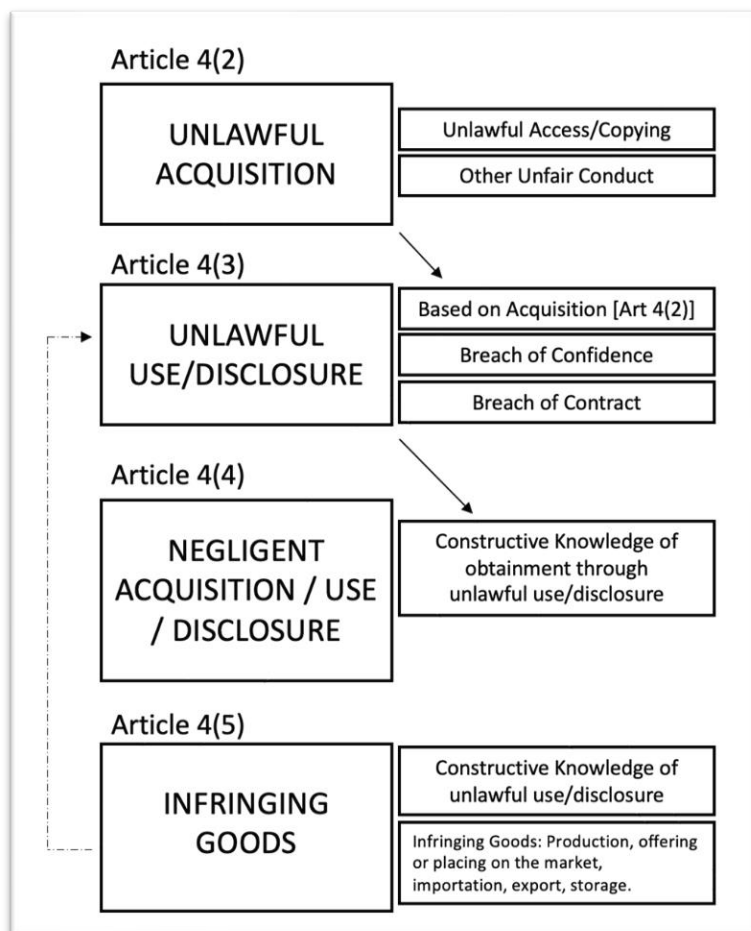


Figure 15: Cascading liability under Article 4

The analysis in Part I of this report highlighted that the kinds of evidence submitted by claimants to substantiate infringement claims are often not always easily discernible from published judgements.



Nevertheless, an interesting issue to be monitored is the standard of proof required to demonstrate unlawful acquisition, disclosure, or use of a trade secret. One Spanish case provides an interesting finding in terms of the standard of proof for unlawful acquisition<sup>(57)</sup>. In this case, the Spanish courts determined that direct evidence was unnecessary, as unlawful acquisition could be reasonably presumed from the almost identical nature of complex software products, as such striking similarity could not be attributed to coincidence.

Generally, however, an observed trend when it comes to Article 4 is that the outcomes of infringement claims are not defined by interpretation of ‘unlawful acquisition, use and disclosure’, but rather by defences raised in relation to: (a) the non-existence of trade secret due to failure of the information to meet the requirements under Article 2; (b) the various lawful methods of acquisition, use and disclosure under Article 3; and, to a lesser extent, (c) the exceptions under Article 5<sup>(58)</sup>.

In this regard, the boundaries defined by the definition of trade secrets are particularly critical. As observed in Part I of this report, the most commonly successful identified defences are that a trade secret does not exist due to either failure to meet the secrecy requirement (i.e. the information is generally known), or failure to meet the reasonable steps requirement. The quantitative analysis suggests that 18 % of unsuccessful claims can attribute their defeat to (at least partially) failure to meet the ‘secrecy’ requirement, 6 % to failure to meet the ‘commercial value’ requirement, and 18 % to failure to meet the ‘reasonable steps’ requirement. The lawful actions under Article 3 have been identified as the basis for a successful defence against infringement for a much smaller proportion of unsuccessful claims: independent discovery (1 %), reverse engineering (1 %), exercise of workers’ rights (4 %), and other honest commercial practices (10 %). The exceptions under Article 5 have however been very rarely raised, and therefore have been successful on a very small number of occasions: freedom of information (3), whistleblowing (1), and union disclosure (0). The single reported case that refers to a potential whistleblowing defence is interesting, however, as it highlights the conceptual relationship between Article 5 exceptions and Article 3(2) lawful uses required/allowed under Union or national law<sup>(59)</sup>.

As observed in Part I, the most commonly identified claims in litigation proceedings are for the use of information based on breach of a confidentiality agreement or contractual restraint. Claims for

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<sup>(57)</sup> Part III: Case 18 (Spain: Presumed Acquisition, 19 February 2019).

<sup>(58)</sup> Technically, the ‘exceptions’ under Article 5 are not cast as exceptions to unlawful uses or liability (as with the lawful uses under Article 3), but as exceptions to the measures, procedures, and remedies granted under the Directive.

<sup>(59)</sup> Part III: Case 16 (Luxembourg: Freedom of Information, 15 March 2017).

unlawful acquisition based on direct access or other unfair practice are relatively uncommon and represent only 20 % of claims. Only 4 % of claims are for use of a trade secret with knowledge of the information's unlawful source (as per Article 4(4)). The bulk of litigation activity is therefore clustered in the 'middle' of the cascading liability model, with little enforcement geared towards negligent third-party information users. Therefore, despite this concept of cascading liability, litigation that cuts across these multiple layers of infringements appears to be quite rare.

One might postulate various reasons why the practical reach of the cascading effect has been limited. First, one surprisingly common trade secret fact pattern is where litigation involves former employees (who often go on to form competing undertakings of their own), and litigation either (a) begins at the point of unlawful use/disclosure (based on contractual/non-disclosure breach) rather than unlawful acquisition, or (b) merges claims of unauthorised acquisition and disclosure/use against the same defendant. Second, typical litigation fact patterns are such that a single infringer is accused of unlawful use and disclosure, rather than the cascading effect passing among several third parties. Furthermore, given the complexity and uncertainty of trade secrets litigation proceedings, even if multiple third parties may have liability under the cascading provisions of Article 4, it may be strategically optimal to prioritise enforcement against the infringement where there is greatest urgency (and risk of further secrecy-compromising disclosure), rather than managing multiple proceedings against different parties. Another factor to note is that the concept of liability for third-party infringers is largely a new one in the post-Directive landscape. Prior to the Directive, actions aimed at preventing the use of a trade secret obtained by a third party in good faith were admitted only in a limited number of jurisdictions<sup>(60)</sup>. In particular, where trade secrets were protected only under unfair competition law, protection might not have been available against an infringer who was not a direct competitor (i.e. where the application of unfair competition law was limited to undertakings in competition)<sup>(61)</sup>. As time progresses, and trade secret holders become more aware of the different layers of liability – particularly in jurisdictions in which implementation of the Directive involved substantial legal reforms – it is possible that third-party litigation will become more common.

Although the post-Directive case-law is still in its early stages of development, a number of key areas can be identified for monitoring future developments. One critical issue would be the standard of negligence for parties who acquire trade secrets from third parties and may be subject to risks of

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<sup>(60)</sup> 2013 Baker McKenzie Study, p 39.

<sup>(61)</sup> 2018 Baseline Report, p 350.

unintentional infringement under Article 4(4). That is to say, judicial interpretations will be critical in assessing the exact circumstances under which a party who acquires (or uses, or discloses) a trade secret from a third party ‘ought to have known’ about the unlawful source.

Future developments should also be monitored for interpretations of the scope of liability under Article 4(5) regarding commercialisation of infringing goods. Article 2(4) of the Directive defines ‘infringing goods’ as ‘goods, the design, characteristics, functioning, production process or marketing of which significantly benefits from trade secrets unlawfully acquired, used or disclosed’. This definition is not just limited to the technical features of goods or the means by which they are produced, but includes the process of commercialising goods through the inclusion of ‘marketing’. Infringing goods may therefore be interpreted to include goods that are legitimately produced but are marketed using misappropriated customer lists. Furthermore, the definition does not appear to be restricted to continued use of a trade secret (as opposed to past use). Articles 2(4) and 4(5) therefore appear to create a broad scope of liability, particularly for third parties that might be trading in potentially infringing goods produced by other undertakings<sup>(62)</sup>. Judicial interpretations of what constitutes a ‘significant benefit’ for a good to qualify as an ‘infringing good’ is an important area to monitor for future case-law developments, as such developments may have implications for how liabilities and risks are managed within supply chain relationships.

One further possible issue that should be closely monitored is how the liability relationships under Article 4 interface with the requirements for trade secret protection under Article 2. The requirements for protection under Article 2 – particularly the reasonable steps requirement – refer to the steps taken by a person ‘lawfully in control of the information’. Such a person is usually the original trade secret holder themselves, but in principle can also be a licensee. The original holder has an obvious incentive to include in the licencing terms an obligation for the licensee to take further reasonable steps to keep the information secret. Furthermore, Article 4(3) stipulates that unlawful disclosure can occur through either ‘breach of a confidentiality agreement or any other duty not to disclose the trade secret’, or ‘breach of a contractual or any other duty to limit the use of the trade secret’. The question, however, arises as to what the obligation on licensees is under statutory provisions on trade secrets themselves. Article 4’s provisions on unlawful disclosure appear to cover liability for the negligence of a company holding a third-party secret that fails to undertake the reasonable steps to maintain

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<sup>(62)</sup> However, the general proportionality provisions of the Directive should in principle provide a control over the extent to which trade in such goods is restricted. In particular, Article 7(1)(b) stipulates that the measures, procedures and remedies provided for in the Directive must be applied in a manner that ‘avoids the creation of barriers to legitimate trade in the internal market’.

secrecy<sup>(63)</sup>. This kind of specific case of infringement liability should however be an area which is monitored for any potential case-law developments, as these may affect the certainties and risks associated with trade-secret licensing practices.

### 3 Measures

Chapter III of the Trade Secrets Directive on 'Measures, procedures and remedies' is divided into three sections: Section 1 on 'General provisions' (Articles 6-9), Section 2 on 'Provisional and precautionary measures' (Articles 10 - 12), and Section 3 on 'Measures resulting from a decision on the merits of the case' (Articles 13 - 15).

While this section will mostly focus on the provisions on measures (Articles 10 and 12), it is useful to first briefly recall the various provisions in Chapter III. Article 6 provides a general obligation for measures, procedures and remedies that ensure redress against the unlawful acquisition, use and disclosure of trade secrets. These measures, procedures, and remedies must be fair, equitable, and effective. Article 7 then stipulates that measures, procedures and remedies should be implemented in a manner that is proportionate and provides for safeguards against abuse. Article 8 sets out a maximum limitation period of 6 years, while Article 9 sets out provisions on the preservation of confidentiality of trade secrets during legal proceedings. Article 10 sets out the specific provisional and precautionary measures that are to be made available to claimants, while Article 11 sets out certain conditions of application and safeguards regarding these measures. Article 12 sets out available injunctions and corrective measures on the merits of a case, while Article 13 sets out conditions of application, safeguards, and alternatives in relation to these measures. Article 14 sets out provisions on damages, and Article 15 provides for the specific measure of 'publication of judicial decisions'. Therefore, the Directive's articles on measures need to be understood not in isolation, but in the context of this entire chapter of provisions, which ensure a balance between protecting the interests of trade secret holders and other policy goals. A visual representation of the conceptual relationship between these provisions is presented in Figure 16.

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<sup>(63)</sup> Niebel, R., de Martinis, L., & Clark, B. (2018). The EU Trade Secrets Directive: all change for trade secret protection in Europe?. *Journal of Intellectual Property Law & Practice*, 13(6), 445-457; p 7.

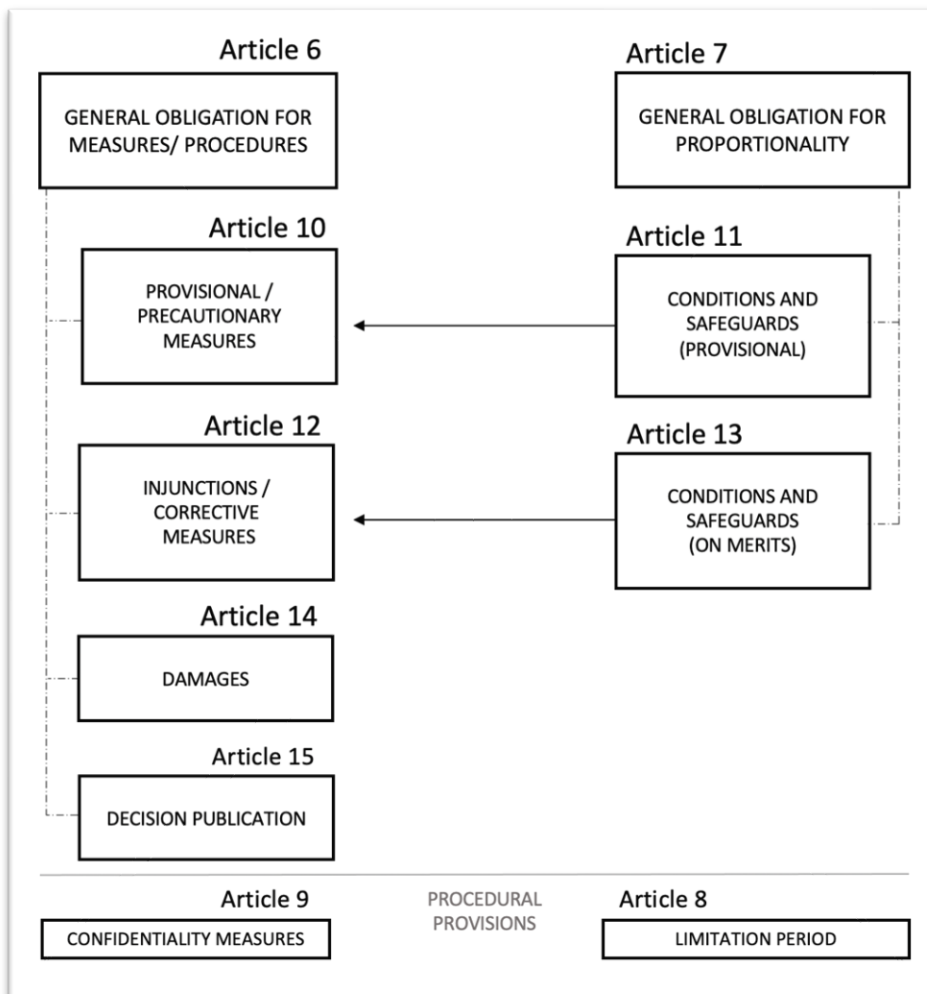


Figure 16: Measures and provisions of Chapter III of the Directive

Commentaries on the measures provided for trade secrets enforcement often stress the way the Trade Secrets Directive diverges from the Intellectual Property Rights Enforcement Directive<sup>(64)</sup> <sup>(65)</sup>. This relationship between these legal instruments is alluded to in Recital 39 of the Trade Secrets Directive, which casts the Trade Secret Directive as *lex specialis* relative to the *lex generalis* of the Enforcement Directive. The relationship is, however, nuanced. Within the legal scholarship, there is debate as to whether trade secrets are indeed a category of intellectual property rights (as opposed

<sup>(64)</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (Text with EEA relevance); OJ L 157, 30.4.2004, p. 45–86.

<sup>(65)</sup> See generally Riis, T. (2020). Enforcement of rights in trade secrets. In *The Harmonization and Protection of Trade Secrets in the EU* (pp. 219-236). Edward Elgar Publishing; p 219.

to a specific subset of unfair competition)<sup>(66)</sup>. This question is not just academic, as characterisation as an intellectual property right would trigger application of the provision of the Enforcement Directive for trade secrets litigation. Notably, Recital 13 of the Enforcement Directive suggests the possibility (but not an obligation) for Member States to extend the provisions of that Directive to the domain of unfair competition. Therefore, the legislative choices of individual Member States can extend application of the Enforcement Directive to trade secrets, even if these are not explicitly considered a category of intellectual property rights.

The 2013 Baker McKenzie Study prepared for the European Commission noted that '[a] point to be underlined is that there is no clear answer as to whether trade secrets are considered as intellectual property under national legislation'<sup>(67)</sup>. The 2018 Baseline Report further stressed the importance of distinguishing between Member States in which trade secrets are recognised as intellectual property rights, and those in which their nature is unclear. As it summarised the situation at that time,

Italy and Portugal have express provisions related to trade secrets in their Industrial Property Codes. In Finland, trade secrets are also considered IPRs. Under Greek law, trade secrets are not considered IPRs per se but, in certain cases can enjoy protection under copyright law. The French Intellectual Property Code does not fully and explicitly address trade secrets protection but grants specific protection to manufacturing secrets (secrets de fabrique), punishing the disclosure or attempt to disclose manufacturing secrets committed by a company's director or employee. Commercial trade secrets are, however, not covered by such narrow definition.<sup>(68)</sup>

The categorisation of trade secrets as intellectual property rights also has implications for how damages are calculated. As also noted in the 2018 Baseline Report, '[in] some jurisdictions, like Italy, Finland and Portugal, where trade secrets are considered IPRs, there are specific provisions dealing with the compensation of damages related to IP proceedings, even those involving trade secrets

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<sup>(66)</sup> See, for example, Aplin, T. (2015) Right to Property and Trade Secrets. in C Geiger (ed) *Research Handbook on Human Rights and Intellectual Property* (Edward Elgar, 2015), Ch. 22, pp. 421-437.; Lee, N. (2021). Hedging (into) Property?-Invisible Trade Secrets and International Trade in Goods. *Global Intellectual Property Protection and New Constitutionalism*, Mylly, T. & Griffiths, J.(eds.). Oxford University Press; and Schovsbo, J., & Riis, T. (2019). To Be and Not to Be an IPR - the Protection of Trade Secrets in the EU. 41 *European Intellectual Property Review* 401.

<sup>(67)</sup> *Study on Trade Secrets and Confidential Business Information in the Internal Market*, Final Study. European Commission, April 2013. ('2013 Baker McKenzie Study'), p. 6.

<sup>(68)</sup> 2018 Baseline Report, p. 348.

disputes. In these cases, damages for trade secrets violation are calculated with the same rules that apply to any IPR infringement<sup>(69)</sup>.

In comparing the Trade Secret Directive and the Enforcement Directive, a few observations must be made. First, unlike the Enforcement Directive, the Trade Secrets Directive contains provisions on limitation periods. Second, unlike the Enforcement Directive, the Trade Secrets Directive contains various conditions of application and safeguards for the application of measures. More specifically, these provisions stress the principle of proportionality, particularly in terms of the grant of injunctive relief. Third, unlike the Enforcement Directive, the Trade Secrets Directive does not contain provisions on evidence and measures for preserving evidence. On the matter of this last divergence, the justification appears to be that trade secrets are not exclusive rights, and that in any case, trade secrets litigation would rely on the normal civil law procedural measures for evidence at the national level<sup>(70)</sup>.

The main provisions on measures, Article 10 (Provisional and precautionary measures), Article 12 (Injunctions and corrective measures), and Article 14 (Damages) are reproduced below.

*Article 10: Provisional and precautionary measures*

1. *Member States shall ensure that the competent judicial authorities may, at the request of the trade secret holder, order any of the following provisional and precautionary measures against the alleged infringer:*
  - (a) the cessation of or, as the case may be, the prohibition of the use or disclosure of the trade secret on a provisional basis;*
  - (b) the prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes;*
  - (c) the seizure or delivery up of the suspected infringing goods, including imported goods, so as to prevent their entry into, or circulation on, the market.*
2. *Member States shall ensure that the judicial authorities may, as an alternative to the measures referred to in paragraph 1, make the continuation of the alleged unlawful use of*

<sup>(69)</sup> 2018 Baseline Report, p. 355.

<sup>(70)</sup> Riis (2020).

*a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder. Disclosure of a trade secret in return for the lodging of guarantees shall not be allowed.*

*Article 12: Injunctions and corrective measures*

1. *Member States shall ensure that, where a judicial decision taken on the merits of the case finds that there has been unlawful acquisition, use or disclosure of a trade secret, the competent judicial authorities may, at the request of the applicant, order one or more of the following measures against the infringer:*
  - (a) the cessation of or, as the case may be, the prohibition of the use or disclosure of the trade secret;*
  - (b) the prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes;*
  - (c) the adoption of the appropriate corrective measures with regard to the infringing goods;*
  - (d) the destruction of all or part of any document, object, material, substance or electronic file containing or embodying the trade secret or, where appropriate, the delivery up to the applicant of all or part of those documents, objects, materials, substances or electronic files.*
2. *The corrective measures referred to in point (c) of paragraph 1 shall include:*
  - (a) recall of the infringing goods from the market;*
  - (b) depriving the infringing goods of their infringing quality;*
  - (c) destruction of the infringing goods or, where appropriate, their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question.*
3. *Member States may provide that, when ordering the withdrawal of the infringing goods from the market, their competent judicial authorities may order, at the request of the trade secret holder, that the goods be delivered up to the holder or to charitable organisations.*



4. *The competent judicial authorities shall order that the measures referred to in points (c) and (d) of paragraph 1 be carried out at the expense of the infringer, unless there are particular reasons for not doing so. Those measures shall be without prejudice to any damages that may be due to the trade secret holder by reason of the unlawful acquisition, use or disclosure of the trade secret.*

*Article 14: Damages*

1. *Member States shall ensure that the competent judicial authorities, upon the request of the injured party, order an infringer who knew or ought to have known that he, she or it was engaging in unlawful acquisition, use or disclosure of a trade secret, to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of the unlawful acquisition, use or disclosure of the trade secret.*

*Member States may limit the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer where they act without intent.*

2. *When setting the damages referred to in paragraph 1, the competent judicial authorities shall take into account all appropriate factors, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the trade secret holder by the unlawful acquisition, use or disclosure of the trade secret.*

*Alternatively, the competent judicial authorities may, in appropriate cases, set the damages as a lump sum on the basis of elements such as, at a minimum, the amount of royalties or fees which would have been due had the infringer requested authorisation to use the trade secret in question.*

### 3.1 Provisional measures

The main provisional measures provided for in the Directive are: (i) injunctions against use of the trade secret, (ii) injunctions against the commercialization of infringing goods (including the seizure of infringing goods), and (iii) lodging of compensation guarantees for continued use of a trade secret.

As observed in Part I of this report, the actual granting of preliminary measures is surprisingly uncommon (although this is possibly due to the methodological limitations of the study)<sup>(71)</sup>. Where preliminary measures were granted, the most common measures relate to the presentation of specific evidence, although the Trade Secrets Directive itself does not set out an explicit requirement for such measures. There were no reported cases in which provisional injunctions were subject to the lodging of guarantees by the claimant, nor were there any reports of preliminary measures that were granted and then subsequently revoked.

### 3.2 Measures on merits

The main measures on the merits of claims provided for in the Directive are: (i) injunctions against use of the trade secret, (ii) injunctions against the commercialisation of infringing goods, (iii) corrective measures for infringing goods, (iv) destruction of records, and (v) damages. The grant of damages requires actual or constructive knowledge of the unlawful nature of the infringing act, and the quantum of damages awarded is based on actual prejudice suffered. The factors to be accounted for when setting damages include negative economic consequences (including the trade secret holder's lost profits), unfair profits made by the infringer, and other non-economic factors such as moral prejudice. Alternatively, damages may be set as a lump sum based on the minimum royalties/fees that would have been due.

Among claims that resulted in a finding of infringement, damages were awarded on approximately half of such occasions. As observed in Part I, there is wide variation in the quantum of damages awarded. The most common approach to the awarding of damages was the basis of economic damages, with analysis of non-economic and moral damages being relatively uncommon. Even more rare was the basing of damages on market-based royalties. This observation is consistent with the very context-specific nature of trade secrets infringement litigation, where courts undertake detailed analysis of case-specific fact patterns, which may include the nature of the harm caused to trade secret holders and assessments of the claimant's lost profits or the infringer's unfair profits. However, approaches to damages calculation can still be quite varied, as shown by one anomalous case in which a Cypriot court determined that a just and reasonable amount would be 3 months' worth of the defendant's salary<sup>(72)</sup>.

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<sup>(71)</sup> See Part I, Section 2.2.

<sup>(72)</sup> District Court of Limassol (IKOS CIF Limited v XXXX Coward a.o., 5467/2009), 19 November 2018.

As observed in Part I, injunctive relief regarding the use of the trade secret is the most commonly requested and granted measure. The granting of corrective measures relating to infringing goods is surprisingly uncommon – a finding partially consistent with the general trend that trade secrets litigation tends to involve commercial information rather than technical information used for the actual production of goods<sup>(73)</sup>.

### 3.3 Criminal measures

Notably, the measures set out in the Trade Secret Directive are all civil in nature, pursuant to the general obligations of Article 6. While the motivation of the Directive is to ensure sufficient and consistent levels of civil redress, it is possible for Member States to provide more far-reaching protection against trade secret infringements as long as the Directive’s safeguards are respected<sup>(74)</sup>.

One way in which more far-reaching protection might be introduced is through criminal liability for trade secret infringement. The observed trend has been that criminal proceedings for trade secret infringement remain very rare and exceptional. In the present study, at least one criminal proceeding has been observed in fourteen Member States<sup>(75)</sup>. The case summaries in Part III of this report contain four examples of criminal litigation for trade secrets during the study period<sup>(76)</sup>.

Importantly, because criminal proceedings are outside the scope of the Directive, criminal measures may relate to offences that do not necessarily parallel the Directive’s structure of liability and definition of unlawful actions. This is highlighted in the Spanish case-law, where criminal convictions might not require an analysis of the existence of a trade secret (at least as defined in the Directive), as criminal law is not necessarily constrained by the Article 2 definitions of protected information<sup>(77)</sup>. As criminal liability for trade secret infringements are outside of the scope of the Directive, definitions of criminal offenses might therefore diverge among Member States (where criminal provisions on

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<sup>(73)</sup> This observation is also consistent with the findings of the 2013 Baker McKenzie Study.

<sup>(74)</sup> Recital 10.

<sup>(75)</sup> These Member States are Czech Republic, Germany, Estonia, Spain, Croatia, Italy, Lithuania, Luxembourg, Hungary, Netherlands, Poland, Slovenia, Finland, and Sweden.

<sup>(76)</sup> Part III: Case 5 (Estonia: Criminal Acquittal, 15 May 2020); Case 16 (Luxembourg: Freedom of information, 15 March 2017); Case 17 (Spain: Criminal Proceedings, 8 March 2022); Case 18 (Spain: Presumed Acquisition, 19 February 2019).

<sup>(77)</sup> Part III: Case 18 (Spain: Presumed Acquisition, 19 February 2019).

trade secrets exist), despite harmonisation of definitions and scope of unlawful acts via the civil causes of action under the Directive<sup>(78)</sup>.

## 4 Proportionality

The principle of proportionality is central to the evolution of trade secrets law and is reflected in various ways in the Directive itself. Primarily, Article 7 (Proportionality and abuse of process) provides for an overarching principle of proportionality in the application of the measures, procedures, and remedies set out in the Directive. Article 7(2), in particular, provides for a mechanism for a defendant to counterclaim that a claimant has initiated legal proceedings in bad faith. In practice, however, such ‘bad faith counterclaims’ have been relatively uncommon.

While Article 10 sets out the available provisional and precautionary measures, Article 11 sets out conditions and safeguards for application of these measures. Similarly, while Article 12 sets out the measures available on the merits of a case, Article 13 sets out conditions and safeguards for the application of these measures (as well as certain alternative measures). Articles 11 and 13 might therefore be seen as more detailed articulations of the general principle of proportionality provided for in Article 7<sup>(79)</sup>.

For the granting of a preliminary/precautionary measure, applicants should provide sufficient evidence that they are the holder of a trade secret and that infringement has taken place or is imminent (Article 11(1)). Furthermore, in assessing the proportionality of any such measure, there are eight specific circumstances of the case that are to be taken into consideration (Article 11(2)). Once a measure is granted, it may be revoked (or cease to have effect) if the applicant fails to initiate proceedings on the merits of the case in a timely manner, or if the information in question ceases to meet the requirements for trade secret protection (in a manner not attributable to the respondent) (Article 11(3)). Furthermore, where a preliminary/precautionary measure is revoked based on a failure to initiate procedures, or the infringement was not successful on the merits of the case, an applicant may be required to compensate the respondent or any other injured third party (Article 11(5)). This compensation might be made through assurances previously lodged by the

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<sup>(78)</sup> According to the 2018 Baseline Report (p 415), all Member States except Ireland had some provisions on trade secrets within their criminal laws.

<sup>(79)</sup> See Figure 16.

applicant at the time the measure was granted (Article 11(4)). All of these provisions are manifestations of the principle of proportionality.

Regarding measures granted on the merits of a case, that granting of measures should take into account the same eight specific circumstances that are considered when granting preliminary measures (Article 13(1)). Moreover, when injunctive relief is limited in duration, this duration should be sufficient to eliminate the economic advantages derived by the infringer from the infringing action. Injunctions should also cease to have effect if the information in question ceases to meet the requirements for trade secret protection (in a manner not attributable to the respondent) (Article 13(2)).

Where an infringer is subject to injunctive or corrective measures, they may request that their liability take the form of pecuniary compensation to the trade secret holder instead. This is permitted when the infringer has a lack of constructive knowledge about the unlawfulness of their action, the original measures would cause disproportionate harm, and pecuniary compensation would be reasonably satisfactory. In such instances, the compensation is to be capped at the 'reasonable royalties' level (Article 13(3)). This provides a valuable mechanism for proportionality, as a party may have originally acquired a trade secret in good faith, only to discover its unlawful source afterwards. We might therefore see the 'alternative measures' under Article 13(3) as a proportionality control within the cascading liability structure of Article 4.

Another manifestation of proportionality can be found in Article 14 on damages. Under Article 14(1), where an employee acts without intent, their liability for damages towards their employer may be limited. Lastly, Article 15 on the publication of judicial decisions is a measure also subject to specific proportionality considerations. The purpose of publication is to create a 'deterrent to future infringers and to contribute to the awareness of the public at large' <sup>(80)</sup>. Article 15(3) specifically sets out the criteria to be considered in granting this specific measure.

*Article 7: Proportionality and abuse of process*

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<sup>(80)</sup> Recital 31.

1. *The measures, procedures and remedies provided for in this Directive shall be applied in a manner that: (a) is proportionate; (b) avoids the creation of barriers to legitimate trade in the internal market; and (c) provides for safeguards against their abuse.*
2. *Member States shall ensure that competent judicial authorities may, upon the request of the respondent, apply appropriate measures as provided for in national law, where an application concerning the unlawful acquisition, use or disclosure of a trade secret is manifestly unfounded and the applicant is found to have initiated the legal proceedings abusively or in bad faith. Such measures may, as appropriate, include awarding damages to the respondent, imposing sanctions on the applicant or ordering the dissemination of information concerning a decision as referred to in Article 15.*

*Member States may provide that measures as referred to in the first subparagraph are dealt with in separate legal proceedings.*

*Article 11: Conditions of application and safeguards*

1. *Member States shall ensure that the competent judicial authorities have, in respect of the measures referred to in Article 10, the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves with a sufficient degree of certainty that:*
  - (a) a trade secret exists;*
  - (b) the applicant is the trade secret holder; and*
  - (c) the trade secret has been acquired unlawfully, is being unlawfully used or disclosed, or unlawful acquisition, use or disclosure of the trade secret is imminent.*
2. *Member States shall ensure that in deciding on the granting or rejection of the application and assessing its proportionality, the competent judicial authorities shall be required to take into account the specific circumstances of the case, including, where appropriate:*
  - (a) the value and other specific features of the trade secret;*
  - (b) the measures taken to protect the trade secret;*
  - (c) the conduct of the respondent in acquiring, using or disclosing the trade secret;*
  - (d) the impact of the unlawful use or disclosure of the trade secret;*
  - (e) the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties;*

- (f) the legitimate interests of third parties;*
- (g) the public interest; and*
- (h) the safeguard of fundamental rights.*

3. *Member States shall ensure that the measures referred to in Article 10 are revoked or otherwise cease to have effect, upon the request of the respondent, if:*

*(a) the applicant does not institute legal proceedings leading to a decision on the merits of the case before the competent judicial authority, within a reasonable period determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer; or*

*(b) the information in question no longer meets the requirements of point (1) of Article 2, for reasons that cannot be attributed to the respondent.*

4. *Member States shall ensure that the competent judicial authorities may make the measures referred to in Article 10 subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the respondent and, where appropriate, by any other person affected by the measures.*

5. *Where the measures referred to in Article 10 are revoked on the basis of point (a) of paragraph 3 of this Article, where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no unlawful acquisition, use or disclosure of the trade secret or threat of such conduct, the competent judicial authorities shall have the authority to order the applicant, upon the request of the respondent or of an injured third party, to provide the respondent, or the injured third party, appropriate compensation for any injury caused by those measures.*

*Member States may provide that the request for compensation referred to in the first subparagraph is dealt with in separate legal proceedings.*

*Article 13: Conditions of application, safeguards and alternative measures*

1. *Member States shall ensure that, in considering an application for the adoption of the injunctions and corrective measures provided for in Article 12 and assessing their proportionality, the competent judicial authorities shall be required to take into account the specific circumstances of the case, including, where appropriate:*

- (a) the value or other specific features of the trade secret;*
- (b) the measures taken to protect the trade secret;*
- (c) the conduct of the infringer in acquiring, using or disclosing the trade secret;*
- (d) the impact of the unlawful use or disclosure of the trade secret;*
- (e) the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties;*
- (f) the legitimate interests of third parties;*
- (g) the public interest; and*
- (h) the safeguard of fundamental rights.*

*Where the competent judicial authorities limit the duration of the measures referred to in points (a) and (b) of Article 12(1), such duration shall be sufficient to eliminate any commercial or economic advantage that the infringer could have derived from the unlawful acquisition, use or disclosure of the trade secret.*

2. *Member States shall ensure that the measures referred to in points (a) and (b) of Article 12(1) are revoked or otherwise cease to have effect, upon the request of the respondent, if the information in question no longer meets the requirements of point (1) of Article 2 for reasons that cannot be attributed directly or indirectly to the respondent.*
3. *Member States shall provide that, at the request of the person liable to be subject to the measures provided for in Article 12, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:*

*(a) the person concerned at the time of use or disclosure neither knew nor ought, under the circumstances, to have known that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully;*

*(b) execution of the measures in question would cause that person disproportionate harm; and*

*(c) pecuniary compensation to the injured party appears reasonably satisfactory.*

*Where pecuniary compensation is ordered instead of the measures referred to in points (a) and (b) of Article 12(1), it shall not exceed the amount of royalties or fees which would have been due, had that person requested authorisation to use the trade secret in question, for the period of time for which use of the trade secret could have been prohibited.*



#### 4.1 Proportionality in practice

Surprisingly, cases in which proportionality concerns are explicitly considered appear to be less common than expected. This may be because, while proportionality concerns may be raised by the defendant, the final judgement does not refer to proportionality unless actual measures are granted. The dynamics of how proportionality is considered within litigation proceedings may also depend on national civil procedure rules and legal traditions. There may also be the complexity of different approaches to transposition of the Directive into national law: for example, under the German trade secret reforms, the proportionality criteria under Article 13 have been transformed into a defence<sup>(81)</sup>.

One case stands out as an example of proportionality considerations in granting measures: the Italian 'Heraeus v Zimmer Biomet' case<sup>(82)</sup>. This case involved the misappropriation of trade secrets for a medical technology product (a bone cement) and was subject to parallel proceedings in several countries. In the Italian proceedings, the Tribunal of Milan found that there was infringement of the trade secret and ordered an injunction. However, in accounting for the principle of proportionality, the Court considered that an injunction would negatively affect third-party health institutions, including public institutions, that had agreements with the infringing company for the supply of the medical product. The Court found that these agreements could not prevent the grant of an injunction, but could affect the timing of its enforcement. An injunction was granted with a 'grace period' of 1 year (i.e. the injunction would only enter into force after a year), with the objective of 'safeguarding the continuity of ongoing supplies to public administrations and hospital facilities'. One year was seen as sufficient to allow affected third parties to resort to urgent public tenders for the purchase of equivalent products and to train their medical staff accordingly.

This case is an interesting example of a tailoring measure intended to account for the proportionality provisions of the Directive in several ways. First, the decision appears to account (even if indirectly) for several of the circumstances/criteria elaborated in Article 13(1), in particular the legitimate interests of third parties, the public interest, and arguably even the safeguarding of fundamental rights (i.e. the right to health care). Second, while Article 13 alludes to time-limited injunctions, the granted measure makes use of a rarely seen grace period, in which the time restriction is not related to the end of the enforcement measure but rather to its beginning. Third, pecuniary damages were

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<sup>(81)</sup> Ohly, A. (2020). Germany: the Trade Secrets Protection Act of 2019. In *The Harmonization and Protection of Trade Secrets in the EU* (pp. 103-123). Edward Elgar Publishing.

<sup>(82)</sup> Heraeus Medical GBM – Heraeus S.P.A. v Zimmer Biomet Italia S.R.L. – Unknown company (Tribunale di Milano, Sezione specializzata in materia di impresa), 16 May 2019.

still applicable during the grace period as an alternative to an immediate injunction, in consideration of an injunction's disproportional effect. Finally, the case illustrates how proportionality concerns are very context-specific. Indeed, in the various multiple parallel litigation proceedings in different jurisdictions regarding this matter, the Italian case is unique in the granting of this grace period<sup>(83)</sup>.

## 4.2 Specificity of claims

A key trend that emerges from the collective case-law is that successful enforcement of trade secrets requires the holder to precisely specify the information that is infringed and the substance of the claim.

This issue is conceptually linked with the 'identification of the object of protection' issue discussed above<sup>(84)</sup>, where specific identification was an element of meeting the 'reasonable steps' requirement for the definition of a trade secret. The matter of 'specificity of claims', however, refers to the issues of sufficiency and clarity in bringing a claim before the court, assuming that a trade secret does indeed exist. Such identification is necessary to support the legitimacy of a claim and provide a cause of action that links the alleged actions of the defendant and the alleged harm caused to the claimant. Claims that are not sufficiently clear, in many cases due to imprecise identification of the object of the claimed protection, may be dismissed by the court.

What therefore arises is a tension between clarity in the filed claim (and therefore its legitimacy before the court) and the risks to the trade secret holder from disclosing the information as evidence in the proceedings. This highlights the importance of the Article 9 provisions on the preservation of confidentiality in the course of legal proceedings. Prior to implementation of the Directive, most Member States generally had at least some provisions on confidentiality preservation in place, though these differed between jurisdictions and types of proceedings<sup>(85)</sup>. Indeed, it is apparent that one of the main hindrances to trade secret enforcements is the perceived risk of information leakage during legal proceedings, despite the Directive's harmonisation of provisions on confidentiality<sup>(86)</sup>.

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<sup>(83)</sup> For example, in the present study, the same case was litigated in Finland: Heraeus Medical GmbH ja Heraeus Medical AB v Zimmer Biomet Finland Oy (21 January 2020). The Finnish proceedings also resulted in a grant of injunctive relief.

<sup>(84)</sup> Part II, Section 1.4.

<sup>(85)</sup> 2018 Baseline Report, p. 416.

<sup>(86)</sup> This hinderance is also highlighted in the 2013 Baker McKenzie Study, which reports that this fear of leakage is particularly expressed by firms in the pharmaceutical, automotive, IT, and chemical sectors.

In a French case before the Appeal Court of Chambéry, the defendant successfully argued that the claimant's know-how did not qualify as a trade secret because, among other things, it had fallen into the public domain during a previous parallel proceeding before the Tribunal of Paris<sup>(87)</sup>. However, the present study does not reveal any notable trends on confidentiality preservation measures, as these details are often not ascertainable from judgements and may also be reflected in the civil procedure rules of Member States, as opposed to directly in trade secret legislation. This issue is therefore a priority in assessing the implementation of the Directive and its impact.

Another example of the 'specificity of claims' issue is a ruling by the Austrian Supreme Court, in which it was determined that, while it is not necessary to disclose the trade secret in a submission, a complaint should not just refer to generic terms like 'customer lists'; a certain specificity is required for the court to determine whether the conditions for trade secret protection may have been met<sup>(88)</sup>.

The issue is of course important for the enforcement of trade secrets generally, but it is particularly relevant to the issue of proportionality in the granting of preliminary/precautionary measures, as Article 11's conditions on the application of measures require the applicant to provide a sufficient degree of certainty to the court that a trade secret exists. This issue is partially raised, for example, in an Italian case, where preliminary measures for trade secret infringement were not considered because the claims themselves were not 'sufficiently clear'<sup>(89)</sup>.

However, the issue of confidentiality during proceedings affects not only the claimant (and their litigation strategy in terms of the specificity of the claims filed and evidence provided), but also the alleged infringer, who may themselves be a trade secret holder. Disclosure of evidence on a defendant's business practices is often necessary for the court to adjudicate whether a trade secret infringement has taken place, and, as noted above, orders for the presentation of evidence are commonly granted provisional measures. However, where the defendant themselves claims that the evidence sought is protected by a trade secret (i.e. separately from that claimed by the claimant), then such orders might cause unintentional secrecy-destroying disclosures. In such cases, procedural measures to protect confidential information during proceedings become critical for both parties. There is therefore a complex interface between measures for the presentation of evidence (which are within the scope of the Enforcement Directive but not the Trade Secret Directive),

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<sup>(87)</sup> *Devis Etudes Projects (DEP) Engineering c. Aix Hydro*, Cour d'Appel de Chambéry, No RG 20/00550, 3 November 2020.

<sup>(88)</sup> Austria Supreme Court 9 ObA 7/20z, 25 June 2020.

<sup>(89)</sup> Part III: Case 12 (Italy: Sufficiency of Claims, 23 June 2022).

proportionality concerns when granting such measures, and measures for preserving the confidentiality of sensitive evidence during proceedings.

This issue is highlighted by a Portuguese case in which a lower court denied the claimant's request for the defendant to present certain evidence (which the claimant believed would support its claim of trade secret infringement)<sup>(90)</sup>. This denial was based on the court's consideration of proportionality in evidentiary measures, and a determination that such an order to present evidence might jeopardise the trade secrets of the defendant given the information requested. The Court of Appeal of Lisbon revoked the lower court's order and issued a new order that sought to balance the interests of the claimant (in enforcing their allegedly infringed trade secret) and the defendant (in protecting their own independent trade secrets). The new order required the defendant to disclose a redacted form of some of the information requested and divided the procedure into two phases. In the first phase, a judicially appointed expert would confidentially prepare a report on the evidence for the court, which would be accessible only by the judge and the parties' representatives under a duty of secrecy. The judge, after hearing the parties' representatives, would determine whether the report suggested a violation of trade secrets. In the second phase, if the judge determined that there may have been a trade secret infringement, the report would also be made available to natural persons identified by the parties. Otherwise, no one else would be made aware of the report's contents. This procedure would be concurrent, if necessary, with the more standard confidentiality measures of restricting access to hearings, records, and the non-confidential version of the judgement. This case stresses that Article 9 measures on preserving confidentiality in proceedings are important not only for the claimant, but also for the defendant, and that the application of such measures should also be reflected in proportionality analysis.

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<sup>(90)</sup> Lisbon Court of Appeal (Process No 99/21.6YHLSB-A.L1-PICRS), 10 March 2022.

## Conclusion

This report presents an analysis of trade secrets litigation trends across the European Union (EU). The analytical focus is on trade secrets litigation between 1 January 2017 and 31 October 2022. In total, 695 legal proceedings were analysed across the 27 Member States of the EU to produce this analysis.

This does not, however, represent the full scope of trade secret disputes, for two important reasons. First, constraints on the public availability of lower court judgements were a major methodological limitation on the study. Second, no information is available on the extent to which disputes involving trade secrets are adjudicated via private or institutional arbitration, or the extent to which disputes are resolved through extrajudicial settlements. Perceived uncertainties regarding the application of trade secrets law, and the complexities of trade secrets litigation, might lead risk-averse parties to opt for cautious out-of-court approaches, particularly in business-to-business disputes. Previous research based on stakeholder interviews suggests that litigation levels may be lower than expected due to the risks of reputational costs<sup>(91)</sup>. Public knowledge that trade secrets misappropriation has occurred may cause reputational damage, as the public may perceive that the harmed company was unable to protect its sensitive information. Therefore, these companies may prefer to address misappropriation through extrajudicial settlements. These methodological limitations suggest that the actual number of trade secrets disputes is higher than that captured in this study. Nevertheless, this study provides important insights into litigation trends, which are relevant in tracking the process of harmonisation of trade secrets law across the EU.

Part I of this report offered a quantitative analysis of trade secret litigation proceedings. This analysis suggests that trends in trade secrets litigation differ significantly across Member States in terms of case volumes, case composition, legal fora, and procedural dimensions. Considered cumulatively, the analysis underscores that trade secret enforcement remains a very broad and dynamic area of litigation, in which new trends continue to emerge. While some Member States see enforcement of trade secrets primarily through the lens of administrative proceedings, litigation largely remains a civil matter, with criminal proceedings representing a relatively minor proportion of cases. An important finding is that trade secrets litigation in the EU appears to be highly localised at the national

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<sup>(91)</sup> 2018 Baseline Report, p 348.

level in terms of the geographical distributions of litigating parties. The 2013 Baker McKenzie Study prepared for the European Commission also noted that cross-border trade secrets litigation is rare, and therefore this observation seems to be consistent both pre-Directive and post-Directive<sup>(92)</sup>.

It is also apparent that protection of undisclosed commercial information is litigated more often than undisclosed technical and manufacturing information, although the manufacturing industry is the commercial sector most often implicated in litigation proceedings. The economic literature tends to stress the role that trade secrets play in promoting innovation and their function as a complimentary tool to patents and other formal intellectual property rights<sup>(93)</sup>. This is particularly important for SMEs, which tend to produce incremental innovations that might fall below the threshold of patentability or choose to avoid the administrative and financial costs of patent prosecution. Recitals 1-4 of the Trade Secrets Directive allude to the need to facilitate innovation, but also to the role of trade secrets in protecting competitiveness and investments; the latter may of course include non-research investments, such as advertising, marketing and commercial strategies. Based on the observed trend of a higher frequency of trade secrets litigation involving commercial information rather than technical know-how, it is important to emphasise the role of trade secrets in safeguarding competitiveness and investments in business strategies, separately from research and innovation outputs.

This is particularly important in light of the empirical observations documented in Part I of this report on the commercial sectors implicated in litigation. Manufacturing is the most commonly implicated sector in trade secrets litigation as whole. Unsurprisingly, manufacturing is even more prominent in litigation involving technical information. For litigation involving commercial information, however, while manufacturing is still the most significant sector (but to a much lesser extent), the distribution of commercial sectors implicated is much broader. This implies that the protection of commercial information through trade secrets law is widely relevant across almost all sectors of the economy. This is not to say, of course, that the role of trade secrets in promoting innovation is overstated in the literature – rather, the types of disputes that result in enforcement through litigation tend to be disputes over commercial information rather than sub-patentable innovation outputs. This may simply be because much commercial information (like customer lists or financial information) is extremely easy to replicate in the absence of legal protection. Technical information (like manufacturing know-how), on the other hand, often confers some natural lead-time to the innovator

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<sup>(92)</sup> 2013 Baker McKenzie Study, p. 42.

<sup>(93)</sup> For a summary of the economic literature on trade secret protection, see the 2013 Baker McKenzie Study.

(even without legal protection), as this kind of information is more difficult to replicate by competitors, and may therefore be relatively less vulnerable to disclosure through unfair commercial practices. Trade secrets protection nevertheless remains vital for both technical know-how and business information, although disputes in commercial information dominate the observed litigation trends.

Part II of this report discussed selected provisions of the Trade Secrets Directive, in particular: the definition of trade secrets; unlawful acquisition, use, and disclosure of trade secrets; enforcement measures; and the principle of proportionality. This analysis was supported by selected summaries of the key cases presented in Part III below.

Three key trends are particularly evident from the analysis in this study and have major implications for the process of harmonising the European legal framework for trade secrets law. The first trend is that there seem to be notable developments in the interpretation of the ‘reasonable steps’ requirements under the Article 2(1) definition of ‘trade secret’. This requirement seems to be generally interpreted in a flexible and context-specific manner that considers various factors, such as the value of the trade secret and the capacities (e.g. size and business sector) of the trade secret holder. Further developments are anticipated in this direction, leading to a definition of ‘trade secret’ that encompasses the concept of proportionality – a central theme of the Directive – and serves the particular interest of SMEs, which vary greatly in economic size and technical capacity.

The second apparent trend is that, in order for contractual measures – such as confidentiality agreements – to meet the required criteria for granting trade secret protection, it is crucial to explicitly identify the trade secrets involved. This is a critical trend to note, as it has direct implications for the way undertakings incorporate trade secret management strategies into their employment contracts and human resource frameworks.

The third trend is that challenges still seem to persist in trade secret holders’ perceptions of procedural measures to preserve confidentiality during proceedings, and the risks of unintentional disclosure, which results in a tendency for (potentially legitimate) infringement claims to be dismissed due to their lack of specificity and clarity. This risk may directly affect the litigation strategies of trade secrets holders, although Article 9 of the Directive seeks to harmonise provisions on confidentiality-preserving measures.

As the time since adoption of the Directive has been relatively short, case-law trends are still evolving. Nevertheless, there are several further key issues that should be continuously monitored

for developments, as they have significant implications for the impact of harmonised trade secrets law within the EU.

In terms of the definition of ‘trade secret’ and the scope of protectable subject matter, case-law developments on the exclusion of ‘experience and skills gained by employees in the normal course of their employment’<sup>(94)</sup> will be important, as they may influence the strategic training and employment strategies of undertakings. More generally, any developments regarding the relationship between secrecy and commercial value, particularly for large data sets such as those generated through IoT applications or used in artificial intelligence development, are likely to attract significant attention. These developments will be important because they may provide the legal certainties necessary to further incentivise investment in the data economy.

Jurisprudential clarifications would also be constructive on several issues regarding unlawful uses of trade secrets and remedies for infringements. First, more case-law on the methodologies used for calculating damages (and the choice of damage approach in various infringement scenarios) is likely to increase trade secret holders’ confidence in the litigation system. Second, judicial interpretations on the standard of negligence for third parties who acquire a trade secret but later discover that it was acquired unlawfully are needed. These developments will likely take some time to emerge, particularly as good-faith third-party liability for trade secrets use is a relatively new concept in the post-Directive landscape. Third, judicial interpretation of the ‘significant benefit’ standard for ‘infringing goods’<sup>(95)</sup> will be needed, as this can affect the potential liabilities of undertakings at different points in commercial supply chains. This issue may also become more significant as more legal certainty develops regarding the relationship between trade secrets law and big data, and where big data is leveraged to produce and market a wider range of consumer goods.

On the issue of proportionality, jurisprudence is also likely to develop over time; this is a key area to monitor, as different courts may have different conceptions of how to balance various public interest-related criteria.

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<sup>(94)</sup> Recital 14.

<sup>(95)</sup> Article 2(4).



The 2018 Baseline Report on trade secrets litigation in the European Union found that trade secrets holders were reluctant to enforce trade secrets through litigation proceedings for the following reasons<sup>(96)</sup>:

- i. the burden of proof to demonstrate that the misused information qualifies as a trade secret;
- ii. protection scattered among different sources of law, with unclear or insufficient regulation;
- iii. difficulty of securing evidence and high related costs;
- iv. the absence of appropriate procedural measures to guarantee confidentiality during litigation;
- v. difficulties related to the quantification of damages;
- vi. the absence, in certain Member States, of specialised courts to handle trade secrets cases.

Following the identification of these issues in the Baseline Report, there have been at least some notable developments regarding the definition of ‘trade secret’, and further jurisprudential developments are likely to mitigate the concerns under issue (i) (qualification of trade secrets). Furthermore, implementation of the Trade Secrets Directive at the national level should in principle mitigate the uncertainties associated with issue (ii) (unclear legislation). Issue (iii) (evidentiary challenges) remains an inherent complexity of trade secrets litigation and the very nature of the subject matter. As the jurisprudence evolves, future work at the stakeholder level may seek to develop industry-specific best practices for not only trade secrets protection but also the collection and preservation of potential future evidence<sup>(97)</sup>.

As discussed in this report, issue (iv) (confidentiality measures) remains a major topic to be addressed. Given the critical nature of this matter, the implementation of confidentiality-preserving measures through legal reforms may need to be complimented by training judicial staff in best practices for maintaining confidentiality. More importantly, the existence of these measures needs to be communicated effectively to trade secret holders to create an environment of certainty and confidence in which enforcement of trade secrets through litigation is perceived as effective.

Issue (v) (quantification of damages) is again an area in which future case-law developments will bring some certainty, particularly in terms of which damage quantification methodologies are applied

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<sup>(96)</sup> 2018 Baseline Report, p. 8.

<sup>(97)</sup> For example, see previous publications aimed at providing industry-level guidance, such as: CREATE.org & PwC (2014). *Economic Impact of Trade Secret Theft: A framework for companies to safeguard trade secrets and mitigate potential threats*. The Center for Responsible Enterprise and Trade, 2014; and European Commission (2022). *Cybercrimes and trade secret protection*. European IP Helpdesk.

in which circumstances. Lastly, regarding issue (vi) (specialised courts), further litigation will naturally bring increased capacity to competent authorities to deal with the nuances of trade secrets and eventually create greater confidence amongst trade secret holders in the litigation process. However, the complex nature of trade secrets law itself requires that the process of harmonising substantive law be balanced with the inherent differences in procedural law between Member States, and the diversity of the legal fora for enforcement and litigation.

While this report documents various observations on trade secrets litigation trends, it is not intended to provide far-reaching interpretations of the impact of the Trade Secret Directive. As no corresponding quantitative analysis was undertaken before the Directive, it is not possible to conclude how litigation trends have evolved pre-Directive to post-Directive. However, it is apparent that many aspects of trade secrets law that developed pre-Directive in various Member States correspond with codification through the Directive, and are now anticipated to be applied in a more harmonised manner across different Member States. The Directive therefore provides clarity and guidance on core aspects of trade secrets law and promotes the application of trade secrets protection in a more uniform manner across the EU.

It must still be stressed that only a few years have elapsed since the implementation of the Directive, and therefore qualitative changes in litigation trends might not yet be observable, as they are still under development. Nevertheless, this report (along with the 2018 Baseline Report) provides the supporting insights necessary to undertake future assessments of the Directive's impact.

Taking a broad view of the findings in this report, it is evident that trade secrets protection is a particularly nuanced legal area, which is designed to cover a wide range of subject matter and is highly context-specific in its application. The challenge is therefore to find a balance between the legal certainties of harmonisation and the flexibilities needed to appropriately deal with the subject matter within the diversity of legal systems that exist across Member States. This is a complex matter, given that trade secrets law overlaps with a range of other legal fields, including unfair competition, intellectual property law, contract law, labour law, commercial law, and general civil law. The Court of Justice of the European Union has yet to provide clarification on substantial provisions of the Trade Secrets Directive<sup>(98)</sup>. While the existence of many common legal norms may already

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<sup>(98)</sup> To date, the CJEU has been called upon to interpret provisions on the Trade Secrets Directive only *obiter* in relation to access to documents under public procurement rules (07/09/2021, C-927/19, 'Klaipėdos regiono atliekų tvarkymo centras' v UAB; 17/11/2022, C-54/21, Antea Polska S.A. v Państwowe Gospodarstwo Wodne Wody Polskie) and

be observed, it will take some time for Member States' jurisprudence to evolve to achieve true harmonisation within the boundaries of the subject matter's inherent complexity.

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applications for marketing authorisation for medicinal products (05/02/2018, T-235/15, *Pari Pharma GmbH v. European Medicines Agency*).

## Part III: Key Case Summaries

This part of the report provides summaries of selected trade secret cases within the period of this study. In some instances, these are leading cases that provide important precedents in a particular Member State and are therefore indicative of the notable trends discussed in Part II. In other instances, these are cases that stand out due to interesting fact patterns or notable interpretive issues, which are instructive for evaluating the state of trade secrets litigation in Europe. The cases summarised in this part are listed below.

### 1. **Austria: New TS Provisions**

Supreme Court Case No 4 Ob 188/20f (26 January 2021)

*Leading Austrian case on interpretation of new trade secret provisions*

### 2. **Belgium: Implied Duty**

Govaerts Recycling v. P.V., Business Court Antwerp (9 May 2019)

*Implied duty of confidentiality for external consultant*

### 3. **Belgium: Customer Lists**

Kevlaer bv v K.D.V., Elano nv, Finance 4 You bv, S.V.D.L., Finaid bv, Business Court Brussels, (29 July 2020)

*Discussion of protection of customer lists*

### 4. **Bulgaria: Confidentiality Obligations**

Katrin Max OOD v EverClean EOOD (10 April 2018)

*Leading case on reasonable steps and confidentiality obligations*

### 5. **Estonia: Criminal Acquittal**

Criminal case against K. M., J. K., M. K. and BloomEst OÜ (15 May 2020)

*Criminal case that resulted in acquittal of criminal charges*

### 6. **Finland: Unreleased Products**

MAO:8/2022 Oy Granula Ab Ltd. v Palonot Oy and A (4 March 2022)

*Case involving prototypes or unreleased product designs*

**7. Finland: Gaming Software**

MAO:398/20 SuperScale Sp. z.o.o v Traplight Oy (7 September 2020)

*Trade secret infringement in the gaming software industry*

**8. France: Definitions of Know-How**

18/04573 X v Aéroports de Paris; Cour d'Appel de Paris (14 January 2020)

*Case involving software and know-how*

**9. France: Arbitration Between Non-EU Parties**

Osama E. c. Synthes GmbH, Cour de Cassation, No 10624 (15 September 2021)

*Case involving arbitration dispute between non-EU parties*

**10. Germany: New TS Provisions**

Higher Regional Court of Düsseldorf docket No 15 U 6/20 (11 March 2021)

*Leading German case on new trade secret provisions*

**11. Germany: Customer Notes**

Regional Labour Court of Düsseldorf, docket No 12 SaGa 4/20 (3 June 2020)

*Analysis of scope of trade secrets and protection of customer lists*

**12. Italy: Sufficiency of Claims**

F.I.M.I (Fabbrica impianti macchine industriali) S.P.A. – Officine Meccaniche Barni S.P.A.  
(23 June 2022)

*Case highlighting the issue of sufficiency and clarity of claims*

**13. Italy: Unfair Competition**

Flag S.P.A. v Mapei S.P.A. – Polyglass S.P.A. – Francesco d'Ursi – S.A.T. Engineering & C.  
S.A.S. (3 May 2017)

*Relationship between unfair competition and trade secrets*

**14. Italy: Intelligent Systems Data**

Leonardo Assicurazioni s.r.l. v Pro Insurance s.r.l. & A&A Insurance Broker s.r.l. & Unknown  
(14 May 2018)

*Trade secrets and data inputs for intelligent systems*

**15. Italy: Technical Measures**

Sadepan Chimica S.R.L., Sadepan Chimica NV v Two natural persons  
(31 March 2021)

*Technical measures for reasonable steps*

**16. Luxembourg: Freedom of information**

PwC v Deltour, Halet & Perrin (15 March 2017)

*Successful defence of whistleblowing*

**17. Spain: Criminal Proceedings**

Tridecor SL v Raúl (8 March 2022)

*Example of Spanish criminal proceedings*

**18. Spain: Presumed Acquisition**

Tradingall Electronic S.L./Aplicaciones Electronicas y De Radiofrecuencia S.L: SAP BA  
187/2019 (19 February 2019)

*Presumption of unlawful acquisition of identical products*

## Case 1 (Austria: New TS Provisions)

**Supreme Court Case No 4 Ob 188/20f (26 January 2021)**

Court	Austrian Supreme Court of Justice	MS	Austria
Year of decision	2021		
Parties' profiles	Claimant	A limited liability company operating in the machine manufacturing field	
	Defendants	Defendant 1 – a limited liability company; Defendants 2 and 3 – two former employees of Claimant, subsequently managing directors and shareholders of Defendant 1.	
Commercial sector	Manufacturing		
Object of dispute	Confidential information consisting of the design and production drawings pertaining to a pivot arm, pivot bearing and pick holder, as well as hydraulic and electrical plans, work orders and parts lists for a tamping unit, including the relevant small components.		
Type of alleged infringing conduct	Illegal acquisition and use/exploitation of trade secrets		
Type of defence	No trade secret exists, all information is generally known (free state of art)		
Finding of infringement	No – first instance No – court of appeal No – Supreme Court		
Penalty	N/a		

**Norms**

Article 2 (1) and Recital 14 of Directive (EU) 2016/943; Section 26b(1) and 26f of the Austrian Federal Act Against Unfair Competition (transposing Articles 2 and 12 of the Trade Secrets Directive).

**Facts**

The Claimant develops and produces machines and vehicles for the construction and maintenance of railway tracks. Defendants 2 and 3 had been working for the Claimant for several years and, due to their functions within the company, had free access to the Claimant's confidential information. Since the summer of 2011, Defendants 2 and 3 had made initial plans to set up their own company that, like the Claimant, would also operate in the machine manufacturing field. From the summer of

2012, they started collecting the Claimant's data, which they thought they could use for their own constructions, and copied them. After the termination of their employment relationships with the Claimant in 2012, Defendants 2 and 3 founded Defendant 1, a limited-liability company. In 2013, Defendant 2 commissioned a designer employed by Defendant 1 to design a pivot arm, pivot bearing, pick holder, and relevant components. With the knowledge of Defendants 2 and 3, the designer used the Claimant's construction plans and drawings as a template. The Claimant initiated civil proceedings against the Defendants on the ground of illegal acquisition and exploitation of trade secrets. By using the Claimant's design drawings as a template, Defendant 1 saved itself a design effort of approximately 25 design engineer working hours.

### **Substance**

The Defendants denied any illegal acquisition and exploitation of business and trade secrets, claiming that the pivot arm and the relevant components of Defendant 1 were based on the free state of the art: the Claimant's tamping unit and data pertaining to it and its components were generally known and could be easily construed or determined by a third party. Therefore, according to the Defendants, the subject data were not trade secrets. The lower courts dismissed the claim and confirmed that, although the data in question were not public knowledge and were also subject to adequate secrecy measures, the data nevertheless did not contain information that had actual or potential commercial value. The assessment was based on an expert opinion that it would take about 40-50 working hours for an averagely talented designer to produce the designs in question, and that, by using the Claimant's drawings as a template, Defendant 1 had saved itself a design effort of approximately 25 hours. This was considered an insufficient commercial value to undermine the Claimant's 'scientific and technical potential, business or financial interests, strategic positions or ability to compete' (as per Recital 14 of the Trade Secrets Directive). The Austrian Supreme Court confirmed the finding of the lower courts by further analysing and elaborating in detail on the following terms:

- (i) 'generally known': information is generally known if it is part of the common knowledge and understanding of the general public or of an average person belonging to the relevant professional circle;
- (ii) 'readily accessible': information is readily accessible if it is not generally known but can be obtained by a person in the relevant public by otherwise fair means without considerable effort and expenditure of time, effort, expense and/or skill;



- (iii) 'as a body or in the precise configuration and assembly of its components': in case of complex information, information consisting of known or readily accessible components is also considered secret as long as the precise configuration and assembly of these components is not yet known or readily accessible (i.e. can't be determined without great expense of time or money);
- (iv) 'commercial value': information has commercial value due to its secrecy if it has an actual or future commercial value or if its disclosure will cause economic disadvantages for the trade secret holder.

The Court also pointed out that the protection of trade secrets neither requires a competitive relationship between the parties nor particular effects on competition. Finally, the Austrian Supreme Court denied the commercial value of the Claimant's design drawings used by the Defendants as templates.

#### **Comment on the relevance of the case**

This is an important judgement, as it sheds light on the terms of Article 2(1) of the Trade Secrets Directive and the complex notions of 'secret', 'generally known', 'as a body or in the precise configuration and assembly of its components', 'readily accessible', 'complex information', and 'commercial value'. In particular, it determines that the threshold of 'commercial value' is not met when the unauthorised use of the trade secret is not so extensive as to undermine the commercial interests or the strategic position of the trade secret's owner.

## Case 2 (Belgium: Implied Duty)

**Govaerts Recycling v P.V., Business Court Antwerp (9 May 2019)**

Court	Business Court of Antwerp	MS	Belgium
Year of decision	2019		
Parties' profiles	Claimant	Private sector (SME)	
	Defendant	Natural person (service provider)	
Commercial sector	Recycled plastic		
Object of dispute	Confidential information on the composition of a customised production line		
Type of alleged infringing conduct	Copying files containing confidential information onto a USB stick		
Type of defence	No TS exists, lawful conduct		
Finding of infringement	Yes		
Penalty	Injunctive measures: cessation/prohibition of TS use Damages		

**Norms**

Trade secrets: Articles I.17/1, XI.332/4 and XI.336/3 of the Code of Economic Law (implementing Articles 2, 4 and 12 of the Trade Secrets Directive).

Other claims: Article 1184 of the old Civil Code; Articles XI.165, § 1 and XI.306 of the Code of Economic Law.

**Facts**

The Claimant, Govaerts Recycling (G.R.), is a family business that has been active in producing recycled plastic products. They claim to have continuously invested in new recycling techniques and developed customised production lines had six unique production lines and were building a seventh. Since 1997, Mr. P.V. had provided technical services to G.R. as an independent service provider. There was no written agreement between the parties, but P.V. issued invoices to G.R. for many years, which were paid. In 2017, G.R. hired a forensic IT investigation firm, which found that P.V. worked for a competitor of G.R. and copied files containing information on the production line onto a USB stick. The information was allegedly passed on to G.R.'s competitor. G.R. accused P.V. of trade

secrets misappropriation and demanded the cessation, prohibition of disclosure, and destruction of the copied files.

### **Substance**

P.V. argued that the production line was not a trade secret, and even if it was, he had obtained it lawfully and was not bound by a contractual obligation that limited the acquisition of trade secrets.

According to the court, G.R. proved that it developed and optimised production lines that are unique and not merely a combination of standard machines. Detailed information on these production lines and their operation was not generally known to the public or easily accessible to people in the relevant field. The fact that suppliers and employees have a duty of confidentiality, and G.R. invested in data security on its servers with various users having different rights to access information, showed they had taken reasonable steps to protect their information. For these reasons, the Court found that the information about G.R.'s production lines satisfied the definition of trade secret under Article I.17/1 of the Code of Economic Law (corresponding to Article 2 of the Trade Secrets Directive). The fact that G.R. and P.V. had never signed a written agreement, let alone a confidentiality agreement, did not rule out trade secret protection, as the restriction on acquiring trade secrets also followed from the obligation of good faith. Furthermore, the Court ruled that P.V. had acquired the trade secret unlawfully. The Court argued that P.V. had given no credible reason why it would have been necessary to copy such a large quantity of documents to a USB stick in such a short period. It was expressly stated on various documents that the information must not be disseminated. Moreover, the Court accepted that, in professional circles active in research and development, it was very common not to disclose or copy the knowledge acquired. Therefore, P.V. had known, or at least should have known, that doing so constituted a trade secret misappropriation. P.V. was ordered to cease and desist from using and disclosing the copied files. Claims regarding copyright and data base protection were rejected. In light of an accepted breach of contract claim, the Court validated the extrajudicial dissolution of the contract by G.R. and ordered P.V. to pay damages and legal costs. P.V. appealed (only) with regard to the damages and legal costs, which the Court of Appeal declared well-founded in part.

### **Comment on the relevance of the case**

In this case, the Court found that there is an implied duty of good faith on the part of the trade secrets' recipient even where no express contractual obligation is in place between the parties. However,

since the appeal did not relate to the question of whether there was a trade secrets misappropriation, the conclusion of the Court of First Instance was not confirmed by a higher court.

## Case 3 (Belgium: Customer Lists)

**Kevlaer bv v K.D.V., Elano nv, Finance 4 You bv, S.V.D.L., Finaid bv, Business Court Brussels, (29 July 2020)**

Court	Business Court of Brussels	MS	Belgium
Year of decision	2020		
Parties' profiles	Claimant	Private Sector	
	Defendant	<ul style="list-style-type: none"> <li>- Natural person (former founder of claimant)</li> <li>- Company of natural person (former founder of claimant)</li> <li>- Company of natural person (former managing director of claimant)</li> <li>- Former employee</li> <li>- Competing company</li> </ul>	
Commercial sector	Insurance		
Object of dispute	Confidential client lists		
Type of alleged infringing conduct	Unlawful acquisition (copying of the list) Unlawful use (contacting clients of claimant)		
Type of defence	<ul style="list-style-type: none"> <li>- Lack of specificity with regard to which client list should be taken into account</li> <li>- No TS exists</li> <li>- No unlawful acquisition or use</li> </ul>		
Finding of infringement	No		
Penalty	None		

**Norms**

Articles I.17/1, XI.332/4 (implementing Articles 2 and 4 of the Trade Secrets Directive) and VI.104 of the Code of Economic Law.

Article 871bis, § 2 of the 1° Code on Civil Proceedings

**Facts**

A.L. and K.V.D. founded an insurance and consultancy company named Kevlaer. In 2019, due to a conflict, the Brussels Business Court ordered A.L. to buy K.V.D. out of Kevlaer. The day after the court order, employee S.V.D.L. allegedly copied the entire client list of Kevlaer, as later confirmed by an IT investigation firm hired by Kevlaer. The company fired the employee. K.V.D. contacted

several clients from a new email address. A few weeks later, he became shareholder and managing director in a competing company. He hired three former employees of Kevlaer, including S.V.D.L. Kevlaer filed a motion to cease and desist from contact with its clients for 5 years on pain of a penalty of EUR 2 000 per client.

### **Substance**

The Court accepted that the client list, containing current, potential and past customers, qualified as a trade secret. It was secret as it was not easily accessible by people in the insurance industry. It contained personal information such as names, addresses, phone numbers, and/or email addresses, and it was stored in an Excel file with thousands of rows and several columns. While K.V.D. may have been able to reconstruct part of the customer list based on his personal knowledge and publicly available information, this did not make the list any less confidential, as this requirement should be assessed from the point of view of an average person in the respective commercial sector. The Court found that Kevlaer's client list had commercial value, as it allowed them to sell insurance products to many people, giving them a competitive advantage over insurance agencies that did not have access to that information. Furthermore, the Court acknowledged that Kevlaer had taken reasonable measures to keep the information confidential by requiring multiple secret and personal passwords. The Court, however, rejected the trade secret misappropriation claim, as it did not find any unlawful acquisition or use. First, the Court argued that S.V.D.L. had still been employed when making the alleged copy and that no access restrictions were in place at that time. Moreover, the programme used to save the client list was set up by default so that, after uploading a file, the same file was automatically deleted from the initial source (i.e. the local drive). Second, Kevlaer could not prove that S.V.D.L. had handed over a copy of the list to the competing company. Third, Kevlaer had only cited a limited number of messages from customers who had received the disputed email from the former business partner K.V.D. It had provided no concrete evidence for its claim that this email was sent out to all individuals and legal entities listed in the 5 145-row file. Moreover, nowhere did it appear that the defendants had approached Kevlaer's customers *en masse*, nor that the defendants had possessed the client list or used it for the purpose of that alleged mass canvassing. The Court also denied additional unfair competition claims.

### **Comment on the relevance of the case**

The trend in Belgian case-law seems to be an almost *prima facie* rejection of client lists as trade secrets on the basis that they are not secret, as the individual client data can be found from publicly available sources online (e.g. via LinkedIn). This rejection seems to stem from competition concerns.

However, the composition (i.e. bringing together) of individual client data, and therefore a list as a whole, can qualify as a trade secret. This case shows that competition concerns can be dealt with in the misappropriation analysis, rather than at the level of the definition of a trade secret.

## Case 4 (Bulgaria: Confidentiality Obligations)

**Katrin Max OOD v EverClean EOOD (10 April 2018)**

Court	Supreme Administrative Court	MS	Bulgaria
Year of decision	2019		
Parties' profiles	Claimant	Wholesale and retail trading company (SME)	
	Defendant	Company competitor (micro-enterprise) and two former employees	
Commercial sector	Wholesale and retail trade		
Object of dispute	Confidential information - names and contacts of Claimant's customers, prices, order volumes, and delivery and payment terms, as well as other commercial terms in Claimant's contracts		
Type of alleged infringing conduct	Illegal acquisition and use of trade secret by the company competitor, contrary to honest commercial practices; illegal disclosure of confidential information and illegal use of confidential information by former employees; illegal solicitation of customers		
Type of defence	Honest commercial practice by competitor; no evidence of illegal acquisition and use of trade secret; no proven damages to the Claimant; invalidity of signed confidentiality declarations  Administrative body and court <i>ex officio</i> finding: no reasonable steps taken to protect trade secret		
Finding of infringement	No – administrative body (Commission for Protection of Competition) No – first instance court No – cassation court		
Penalty	No penalty at any of the instances		

**Norms**

Article 37 and Article 2, paragraph 1, item 4 of the Protection of Competition Act; paragraph 1, item 9 of the Additional Provisions of the Protection of Competition Act

**Facts**

Katrin Max OOD is a distributor (wholesale and retail) of sanitary and cleaning equipment and products under various brands. In 2010, two natural persons, L.N.P. and S.M.A., were hired by Katrin



Max as traders and consultants. They signed confidentiality declarations containing prohibitions from engaging in competitive activities and from using and/or disclosing confidential information during their employment and the 3 years after termination. Katrin Max issued an employer order listing general categories of confidential information. In July 2013, L.N.P. and S.M.A. incorporated EverClean EOOD. On 1 August 2013, L.N.P. and S.M.A. resigned from Katrin Max. At the end of August 2013, EverClean started trading in the same products as Katrin Max. Some of Katrin Max's customers started purchasing from EverClean, decreasing Katrin Max's turnover. Katrin Max filed a request with the Commission for Protection of Competition (CPC) against EverClean, L.N.P. and S.M.A. for the illegal acquisition, disclosure, and use of trade secrets, as well as for unfair solicitation of customers. The CPC dismissed the request, and Katrin Max appealed before the Supreme Administrative Court.

### **Substance**

Katrin Max OOD claimed that its former employees L.N.P. and S.M.A. had had full access to their employer's commercial data, including customer names and contacts, prices, order volumes, and delivery and payment terms, as well as other commercial terms. Katrin Max claimed that, while still its employees, L.N.P. and S.M.A. had incorporated a competitor, EverClean EOOD, that started trading in identical products. Katrin Max argued that L.N.P. and S.M.A., acting in breach of confidentiality obligations and competition laws, delivered all the confidential information they acquired as employees of Katrin Max to their company EverClean. EverClean used this information to eventually acquire a market share, including by offering lower prices to former customers of Katrin Max and by soliciting former customers in a manner contrary to honest commercial practices. L.N.P. and S.M.A. acknowledged that they had signed confidentiality declarations but denied using or disclosing trade secrets to EverClean. EverClean denied any dishonest commercial practice, stating that the accusation was based on mere assumptions and no evidence. EverClean argued that it had begun its real business after L.N.P. and S.M.A. had resigned from Katrin Max OOD, that it did not cause proven damages to Katrin Max, and that it had acquired a market share via its own bona fide efforts. The defendants objected that the confidentiality declarations were invalid, since they imposed restrictions on employees that were null and void pursuant to labour case-law. The Court analysed the requirements for trade secrets protection and concluded that, in order to enjoy such protection, the owner must: (a) identify in advance the concrete, individualised information that constitutes a trade secret (which cannot be simply identified as the entire commercial data in a company); and (b) take appropriate measures to restrict access to such information, including by establishing special access regulations and authorising employees. The Court held that uniform and general

confidentiality declarations, which are not individually drafted for each employee and which do not state the precise information subject to confidentiality obligations, cannot be deemed appropriate measures. This was sufficient per se for the Court to dismiss the appeal and confirm that no infringement had occurred.

**Comment on the relevance of the case**

The Court's decision in this case articulates in detail the trade secret requirements and sets a trend: the decision is later cited in at least two other cases within the relevant period of this study. The decision in this case was confirmed by a five-member panel of the Supreme Administrative Court, which is the highest court instance for such administrative cases.

## Case 5 (Estonia: Criminal Acquittal)

### Criminal case against K. M., J. K., M. K. and BloomEst OÜ (15 May 2020)

Court	Supreme Court of Estonia	MS	Estonia
Year of decision	2020		
Parties' profiles	Claimant	Private company (SME)	
	Defendant	Former employees (K. M., J. K. and M. K.) and a company they had set up (BloomEst OÜ)	
Commercial sector	Wholesale of horticultural and agricultural goods		
Object of dispute	Illegal use of trade secrets consisting of business information (the claimant's business partners, financial info, etc.)		
Type of alleged infringing conduct	Illegal acquisition, use or disclosure of a trade secret		
Type of defence	No trade secret exists		
Finding of infringement	Supreme Court of Estonia: No infringement found Tallinn Circuit Court: Infringement found Harju County Court: No infringement found		
Penalty	Since the defendants were acquitted, no penalty was imposed		

### Norms

Section 377 of the Penal Code; Section 5(2) of the Trade Secrets Act (implementing Article 2 of the Trade Secrets Directive); Article 39(2) of the TRIPS Agreement.

### Facts

Criminal charges were brought against J. K., M. K., and K. M. (former employees) and BloomEst OÜ for the illegal acquisition, use and disclosure of a 'business secret' under Section 377 of the Penal Code. J.K., M.K. and K.M. were the claimant's employees. The claimant's business activities covered the wholesale of horticultural and agricultural goods. The defendants had a legal obligation to protect the claimant's trade secrets based on their employment contracts, the Law of Obligations Act and the Employment Contracts Act. In 2016, J.K., M. K. and K.M. set up a company, BloomEst OÜ, that was intended to compete with the claimant in the wholesale of horticultural products, young plants and plant material. The defendants negotiated with the claimant's various suppliers and customers on behalf of BloomEst OÜ and, allegedly, took advantage of the claimant's trade secrets to take over claimant's cooperation partners. The information concerned the claimant's cooperation partners,

analyses of customers and suppliers, various sales contracts of the claimant, data on sales volumes, price lists, pricing mechanisms, turnover and profit. This information was used in the business plan of BloomEst OÜ to apply for a startup loan from the bank.

### **Substance**

The dispute was over whether the defendants had disclosed and used the claimant's trade secrets when establishing BloomEst OÜ. The County Court dismissed the claim on the ground that the information did not amount to a trade secret covered by the confidentiality provisions included in the employment contracts of the three employees. The employee's contracts required them to keep secret information about pricing mechanisms, the purchase price of goods, the amount of stock, collection of debts, the codes for entering and exiting the building, etc., the disclosure of which could harm the interests of the employer. However, the Court found that the employer had not clearly defined what information was considered a trade secret. Essentially all information concerning the company was declared confidential. Moreover, the contract did not prohibit employees from working in the same field after leaving the company, and the defendants had used their long-standing knowledge and skills to establish a new company. The Court ruled that, since the employer had not clearly specified what information qualified as a trade secret, the employees could not be held accountable for disclosing it. The decision was reversed on appeal, and the Tallin Circuit Court found the defendants guilty, since it considered the information analysed during the court dispute to be a trade secret. To the Circuit Court, the defendants had illegally used the claimant's trade secret in drawing up their business plan, which had been submitted to the bank to start a competing company.

The Supreme Court overturned the Circuit Court's decision and, referring to the decision of the County Court, concluded that no trade secret existed. The Supreme Court emphasised that the defendants were experts in their field with long-term work experience. Therefore, the data used in the business plan could not be considered the claimant's trade secret. The Supreme Court found that the County Court had appropriately held that confidential information was generally defined in employment contracts. This included, among other things, computer user IDs and passwords, personnel data, etc., which do not have the quality of a trade secret due to their nature alone. The Supreme Court expanded on the definition of 'trade secret' and, interestingly, observed that, although the proceedings had started in 2016 (i.e. before the Trade Secrets Directive was transposed into Estonian law), the definition of 'trade secret' in the Directive was identical to the definition in Article 39(2) of the TRIPS Agreement, which had so far been used to define the concept of trade secret in Estonian jurisprudence.

**Comment on the relevance of the case**

The case shows that generally known information and employees' skills cannot be protected as trade secrets. Defining trade secrets too broadly in employment contracts, so that they encompass any and all information an employee may come into contact with during their employment, may result in unenforceable claims.

## Case 6 (Finland: Unreleased Products)

### MAO:8/2022 Oy Granula Ab Ltd. v Palonot Oy and A (4 March 2022)

Court	Market Court of Finland	MS	Finland
Year of decision	2022		
Parties' profiles	Claimant	Large financial corporation	
	Defendant	Large financial corporation and a natural person	
Commercial sector	Chemical industry		
Object of dispute	Trade secret information for non-public new invention		
Type of alleged infringing conduct	Illegal acquisition and disclosure of confidential information to the public in breach of the obligations of professional secrecy		
Type of defence	No trade secret information exists; know-how gathered from elsewhere; generally known information		
Finding of infringement	No		
Penalty	No		

### Norms

Article 1(1) and Article 53(1) of the Patent Act 550/1967; Article 1(1), Article 4(1) and Article 4(3) of the Unfair Business Practices Act 1061/1978.

### Facts

On 9 March 2017, Palonot Oy (later Palonot) filed a patent application with the national Patent and Registration Office. The application concerned a 'composition and method of preparation' relating to a flame retardant for treating various wood products, and the inventors were named as A and B. One of the two inventors, A, before being employed by Palonot Oy, had been employed by Oy Granula Ab Ltd (Granula) from October 2009 to December 2015. Palonot was established in 2016, with A as one of its founders. A had been employed by Palonot since 1 June 2016. On 10 September 2018, Granula filed a patent application for an invention relating to 'composition and method of preparation' for making the same fire protection compounds, the inventor of which was named as C. Granula sought a declaration from the Market Court that (i) the inventor of this invention was C, (ii) Palonot's patent for the same invention was invalid, and (iii) A, in breach of confidentiality agreement, had made unlawful use of Granula's trade secrets. The latter claim was brought not under the Trade

Secrets Act 550/2018 (implementing the Trade Secrets Directive) but under the Unfair Business Practices Act 1061/1978, which was the applicable law at the time of the facts.

### **Substance**

The Market Court stated that A had a confidentiality clause in his employment contract, which also contained a clause stating that the information to be kept confidential included information relating to the technical implementation of Granula's products. The Market Court also stated that the restriction on the use of Granula's trade secrets clause could not, in any event, cover information that A had had before he joined Granula or information that was in the public domain. The Market Court held that it had not been shown that either C or A, while working at Granula, had made the invention described in the patent-in-suit. It was not alleged that the invention had been made by anyone else at Granula. Accordingly, Granula could not have been in possession of a trade secret containing the invention described in the patent-in-suit. According to the evidence in the case, the Court stated that C had not instructed A at Granula in the manufacture or testing of various product processes, nor had Granula shown that C or anyone else at Granula had entrusted A with trade secrets or technical instructions concerning fire protection. The evidence supported the conclusion that Granula's formulas for the flame retardant had been prepared solely by A. The Court accepted that the formulas prepared by A may have been covered by the non-disclosure agreement, but the burden of proof for this was on Granula. However, the Court considered that Granula had presented no evidence that would allow such a conclusion. Furthermore, the Court determined that Granula's argument regarding Palonot's illegal acquisition and use of trade secrets was incorrect. Granula had claimed that it was impossible for Palonot to have developed the patented invention within the 9-month period between the establishment of Palonot and the filing of the patent application. However, the Court found that, given the background and experience of A and B, this was not the case, and it was indeed possible for Palonot to have developed the invention within that timeframe. Moreover, the patent application exploited known technology disclosed in a published US patent. In the light of the above, the Market Court considered that it could not be established that either A or Palonot had relied on Granula's trade secrets or technical instructions in drafting the patent application for the patent-in-suit. Accordingly, A and Palonot could not be held to have acted in breach of fair commercial practices as per the applicable law at the time of the facts, namely Article 1(1), Article 4(1) and Article 4(3) of the Unfair Business Practices Act 1061/1978.

**Comment on the relevance of the case**

The case illustrates the difficulties of determining a breach of trade secrets on the basis of unfair competition law when there is no evidence of direct acquisition and when the unlawful use cannot be reasonably inferred from the actions of the employee after the termination of the employment.



## Case 7 (Finland: Gaming Software)

**MAO:398/20 SuperScale Sp. z.o.o v Traplight Oy (7 September 2020)**

Court	Market Court of Finland	MS	Finland
Year of decision	2020		
Parties' profile	Claimant	Financial corporation	
	Defendant	Large financial corporation	
Commercial sector	Gaming industry		
Object of dispute	Game manuscript, a copyrightable work and trade secret information		
Type of alleged infringing conduct	Illegal use of copyrighted work and illegal acquisition and disclosure of confidential information		
Type of defence	No copyright or trade secret exist		
Finding of infringement	No		
Penalty	The Market Court dismissed the application		

**Norms**

Sections 3, 4, 8 and 9 of the Trade Secret Act 595/2018 (implementing Articles 4, 3, 12 and 10 of the Trade Secrets Directive); Unfair Business Practices Act 1061/1978; Copyright Act 404/1961.

**Facts**

SuperScale created a so-called 'commercial script' for a mobile game called *Traplight's Battle Legion*. A commercial script is a self-contained element of a mobile game that can operate independently from other game elements and includes the development of commercial features in the game, such as the design of in-game views and decision-making options available to players. It may be an original literary work or a catalogue within the meaning of the Copyright Act, but it may also contain trade secrets or technical instructions covered by the Trade Secret Act. The parties concluded a Growth Partnership Agreement, which, inter alia, provided for the commercial development of the mobile game in question. SuperScale's interest in the agreement was based on a share of the revenues from the mobile game after its commercial release. In June 2020, Traplight terminated the agreement. At that time, SuperScale had already substantially completed the production of the commercial manuscript, but its entitlement to royalties had not yet commenced. SuperScale claimed that Traplight had acted contrary to good business faith and practice and had

wrongfully exploited SuperScale's trade secrets by seeking to exploit the commercial script without paying proper remuneration.

### **Substance**

The Market Court stated that, based on the arguments and evidence presented in the case, SuperScale had failed to establish that its alleged commercial script was a copyrighted work independent of the mobile game, or that it was protected as a catalogue the Copyright Act. As a matter of fact, SuperScale's collaboration with Traplight consisted essentially in a consultancy service, that is to say, in providing analysis and feedback on individual features and elements of the game. The Court then moved on to consider whether Traplight made unlawful use of SuperScale's trade secrets or technical information in breach of contractual obligations. The parties submitted extracts from the Growth Partnership Agreement between them, which included a confidentiality clause for trade secrets. SuperScale proceeded on the assumption that Traplight's rights of use would have ceased only upon termination of the agreement. Consequently, according to SuperScale, Traplight's right to use the commercial script would have been based on that agreement while it was in force. However, the Court observed that there was no mention of any commercial script or rights to it in the 'Intellectual Property' section of the agreement, which provided that Traplight was entitled to exploit SuperScale's development proposals even after the termination of the agreement. SuperScale had not demonstrated the likelihood that Traplight, in the contractual relationship and upon termination of the contract, had unlawfully acquired SuperScale's trade secrets in breach of honest commercial practices under Section 3(2)(3) of the Trade Secrets Act (corresponding to Article 4(2)(b) of the Trade Secrets Directive) or that Traplight had otherwise acted in breach of the Trade Secrets Act in any other way relevant to the case. In fact, the feedback provided to Traplight had included solutions that were common practices in the mobile games industry and which did not qualify as trade secrets. The Market Court found that SuperScale had not proved that it had the rights it claimed against Traplight and that its rights had been infringed.

### **Comment on the relevance of the case**

This case shows the importance of IP clauses in partnership agreements between companies. The Court in this case did not accept an interpretation of trade secrets that exceeded what the parties had explicitly agreed upon in the part of the agreement that dealt with IP rights.

## Case 8 (France: Definitions of Know-How)

**18/04573 X v Aéroports de Paris; Cour d'Appel de Paris (14 January 2020)**

Court	Court of Appeal of Paris	MS	France
Year of decision	2020		
Parties' profiles	Claimant	Natural person: employee	
	Defendant	Corporation with a public task (airport)	
Commercial sector	Services for travellers		
Object of dispute	Development of an interactive station		
Type of alleged infringing conduct	Use of an employee's know-how		
Type of defence	Freedom of using ideas in the public domain; know-how has to be accessed by some persons only, not widely disclosed to the public		
Finding of infringement	Court of First Instance: no Court of Appeal: no		
Penalty	No		

**Norms**

Article 1(1)(i) of Regulation (EU) 316/2014 on the application of Article 101(3) of the TFEU to categories of technology transfer agreements defining know-how; Article 700 of the French civil procedure code.

**Facts**

An employee working in the marketing department of Paris Airport developed, in her spare time, an interactive station enabling travellers to access some services that the Airport was not able to yet provide. The employee declared that her invention was not developed during the course of her employment by the employer, who reacted by giving up their right to patent it. One year later, in 2007, Paris Airport communicated the development of interactive stations to their clients; the employee then went to the National Commission of Employees' Inventions (CNIS), and the latter replied in 2009 that the interactive station was not a patentable invention but a method for doing business. Six years later, the employee went to court to claim damages and compensation on the grounds of unfair competition and detriment to her image. The Court of First Instance rejected the claims in 2018. In the same year, the employee appealed with the aim of having the first-instance

decision reversed; in particular, she pleaded that her invention was economic know-how or an idea with economic value.

### **Substance**

The employee based her claim on the finding of the CNIS, according to which the subject matter of the invention related to an (unpatentable) method for doing business. She then claimed that her interactive station, as described, was a method that could be protected under unfair competition law as know-how having economic value. In the absence of a statutory or judicial definition of 'know-how', the parties agreed to rely on the definition provided by Regulation (EU) 316/2014, which in its Article 1(1)(i) defines know-how as 'a package of practical information, resulting from experience and testing, which is: (i) secret, that is to say, not generally known or easily accessible, (ii) substantial ... and (iii) identified ...'. As far as 'economic value' is concerned, the Court affirmed that an idea with economic value is one that provides a competitive advantage by adding sustainable value. The Court found that the method developed by the claimant could not qualify as protectable know-how, since it did not meet the requirement of secrecy. In fact, the interactive station was the outcome of a combination of information known by the public before the employee's initial declaration to the CNIS, since this information was part of a patent application, and some techniques (such as the optical fibre) had been known since the 1970s. The defendant pleaded the freedom to use ideas that are not protected by intellectual property rights. Furthermore, the defendant explained that, in the early 2000s, some interactive stations adopted by the Paris Orly and Paris Charles de Gaulle airports were being developed. The employee had accessed confidential information related to these stations and based her solution upon these. Eventually, it was possible to state that the interactive station devised by the employee was more advanced than, or had further improved on, the former versions that the defendant had started to develop. However, this was not considered sufficient to conclude that there was economic value in the idea. Consequently, the employee's appeal was rejected on all grounds, and the decision of the Court of First Instance was confirmed.

### **Comment on the relevance of the case**

This case illustrates the limits of the notion of know-how and the intersection between patentable inventions and non-patentable methods for business. It is an illustration of the steps one should go through when claiming trade secret protection of know-how. The interpretation given by the Court to the requirement of 'secrecy' under Commission Regulation (EU) 316/2014 would almost certainly disqualify the know-how in question from protection under Article 2(1)(a) of the Trade Secrets Directive.

## Case 9 (France: Arbitration Between Non-EU Parties)

### Osama E. c. Synthes GmbH, Cour de Cassation, No 10624 (15 September 2021)

Court	Cassation court	MS	France
Year of decision	2021		
Parties' profiles	Claimant	Natural person	
	Defendant	Large corporation	
Commercial sector	Manufacturing, implants and biomaterials for medical applications		
Object of dispute	Know-how and ideas concerning a new technical process in the field of spinal disc implants		
Type of alleged infringing conduct	Illegal use of confidential information in breach of confidentiality agreement		
Type of defence	No infringement of the confidentiality agreement		
Finding of infringement	No		
Penalty	No penalty. The Court of Appeal ordered EUR 50 000 indemnity costs against the claimant. The sum was reduced to EUR 3 000 in cassation.		

#### Norms

Article 1520 of the 4<sup>o</sup> *Code de procedure civile* (France); Article 8(1) of the *Code des obligations Suisse* (Switzerland).

#### Facts

In the summer of 2008, the Swiss company Synthes GmbH, specialising in the manufacturing of medical implants, signed a confidentiality agreement with Mr Osama E., an Egyptian citizen and medical doctor specialist in spinal surgery, in advance of a meeting at which Mr E. disclosed a technical approach of his own invention in the field of spinal disc implants. The confidentiality agreement, governed by Swiss law, included an arbitration provision that conferred exclusive jurisdiction on the International Court of Arbitration in Paris. In November 2008, Synthes informed Mr E. that it would not follow up on the project of developing Mr E.'s approach. In May 2013, Mr E. filed a request for arbitration, arguing that Synthes had obtained an international patent and placed on the market a new product incorporating know-how and innovative ideas that had been disclosed at the meeting and were covered by the confidentiality agreement. The Court of Arbitration in Paris,

in its decision of 13 January 2017, dismissed Mr E.'s claim. Mr E. appealed to the Court of Appeal of Paris, bringing an action for annulment of the Court of Arbitration's decision.

### **Substance**

The Appeal Court was called upon to determine whether the Court of Arbitration had erred in its interpretation of the confidentiality agreement between Synthes and Mr E. The appellant contended that the panel had applied a method of interpreting contracts derived from Swiss law and Swiss jurisprudence that was not agreed upon by the parties. This method required that, when the meaning of a contractual term could not be clearly inferred by the will of the parties (the 'subjective' test), the term had to be interpreted 'objectively' as corresponding to its ordinary meaning. The main dispute concerned the interpretation of 'confidential information', with particular focus on the part of the agreement in which a non-exhaustive list of information was included under the heading 'other trade secrets and know-how'. To Mr E., the term should be interpreted as covering any information and know-how that Mr E. had passed on to Synthes, based on the argument that if the information is new to the receiving party, even if it is in the public domain, the receiving party is under the obligation not to disclose it. Synthes contended that 'confidential information' could not be interpreted as covering information and ideas belonging to the prior art and entered into the public domain. Following the 'objective method', the Court of Arbitration had concluded that the term 'confidential', as defined for example in the *Cambridge Dictionary*, implies a notion of secrecy, so that a secret is information that is known only by one or a few people and that must not be revealed to others. Information that is in the public domain, even if it is new to the receiving party, cannot qualify as 'confidential'. On this ground, the Court of Arbitration dismissed Mr E.'s claim. The Appeal Court found that the Court of Arbitration had not erred in applying methods and definitions derived from Swiss law, since the confidentiality agreement was governed by Swiss law. The judgement was substantially upheld by the Cassation Court, although it found that the Court of Arbitration had in part violated the principle of contradiction by relying on an untranslated article of doctrine written in German, a language foreign to that adopted for the arbitration proceedings.

### **Comment on the relevance of the case**

In this case, the French judiciary adjudicated a case in which both the parties and the applicable law were non-EU. The case illustrates a potential gap in the interpretation of the meaning of 'confidential information' when it comes to private contracts as opposed to judicial proceedings, in particular when a contract is governed by non-EU law.

## Case 10 (Germany: New TS Provisions)

**Higher Regional Court of Düsseldorf docket No 15 U 6/20 (11 March 2021)**

Court	Higher Regional Court Düsseldorf	MS	Germany
Year of decision	2021		
Parties' profiles	Claimant	Private company	
	Defendant	Private company (competitor of claimant)	
Commercial sector	Manufacture of machinery and equipment		
Object of dispute	Confidential information consisting in technical drawings of machine parts		
Type of alleged infringing conduct	Director of Defendant allegedly unlawfully passed information acquired as former employee of Claimant on to his new employer for commercial exploitation		
Type of defence	Information acquired by lawful reverse engineering; information publicly known; no reasonable steps taken to protect; information not used for commercial exploitation; no standing to sue		
Finding of infringement	Yes – first instance Yes – appeal		
Penalty	Injunctive relief; providing information; declaration of damages obligation		

**Norms**

Sections 2 and 17 of the Trade Secrets Act 2019 (implementing Article 2(1) and Article 9 of the Trade Secrets Directive); Act against Unfair Competition (pre-2019 version); Sections 823 and 1004 of the Civil Code.

**Facts**

The claimant and defendant are competitors in the field of manufacturing and maintenance of machinery and equipment. The defendant's director is a former employee of the claimant. Both companies submitted offers regarding the exchange of components for centrifuge machinery to a client, who then awarded the tender to the defendant. The defendant's offer had included technical (CAD) drawings of centrifuge drums, which the claimant alleges the defendant's director had acquired while still employee of the claimant and unlawfully transferred to the defendant. The

claimant argued that the access to these drawings allowed a low price and quick service, without which the defendant would not have won the tender. The defendant argued the reverse engineering defence, as well as the public availability of the information, the failure to take reasonable steps, non-use of the claimant's information, and the claimant's lack of standing to sue.

### **Substance**

The Higher Regional Court of Düsseldorf confirmed the first instance judgement's decision of trade secrets infringement and upheld the order for injunctive relief, provision of information and declaration of damages.

The Court held that the technical (CAD) drawings were trade secrets. Whether at least parts of this information could be reversed engineered (by measuring the existing centrifuge drums) was not considered relevant to the finding of trade secrets, as the Court assessed the commercially relevant drawing itself as a trade secret, the entirety of which was held to have commercial value. The Court also rejected the defence of lawful acquisition by reverse engineering because the measurement of physical centrifuge drums could at most have provided the dimensions, but not the remaining technical information of the drawings. The Court confirmed earlier case-law according to which the 'reasonable steps to keep secret' are an objective legal standard lower than 'ideal protection or extreme security', to be determined considering the case-specific circumstances, particularly the type and value of the trade secret, its use, its development cost and relevance to the company, information labelling, and the contracts in place with employees and partners. According to the Court's detailed analysis, the sum of the claimant's technical, organisational, and contractual means was compliant with this legal standard. The first instance judgement should not have assumed a trade secret without finding these facts, which was then remedied by the second-instance court's own fact-finding. The Court found that the defendant's director had acquired the trade secret during his time as employee of the claimant and had no legal basis to transfer these trade secrets to a third party (i.e. the defendant).

The Court had to decide on the timeline, according to which the contested trade secret infringement occurred before the Trade Secrets Act 2019 (implementing the Trade Secrets Directive) came into effect, while the later judgement was rendered under the effect of the latter. The Court granted injunctive relief because of an infringement under the previous statutory laws. With regard to the 'reasonable steps' of secrecy protection, the Court held that these were necessary only after the



Trade Secrets Act 2019 had come into effect. The Court also found that the trade secrets rights were transferred from the previous owner to the claimant, confirming the claimant's standing to sue.

**Comment on the relevance of the case**

This judgement has received much attention in later court decisions and the literature, as it provides guidance on several important aspects of the German Trade Secrets Act. In particular, the decision includes detailed assessments of the nature and definition of a trade secret, reverse engineering, the legal standard of 'reasonable steps' of secrecy protection, the rights of employees, and the ownership and timescale of trade secret rights.

## Case 11 (Germany: Customer Notes)

### Regional Labour Court of Düsseldorf, docket No 12 SaGa 4/20 (3 June 2020)

Court	Regional Labour Court Düsseldorf	MS	Germany
Year of decision	2020		
Parties' profiles	Claimant	Small private company	
	Defendant	Former employee	
Commercial sector	Manufacture and sale of plastic packaging		
Object of dispute	Preliminary injunction against use of commercial information (customers, revenue, etc.) by former employee in new employment		
Type of alleged infringing conduct	The defendant allegedly acquired the information during employment at Claimant and then used this information in his sales activity for new employer		
Type of defence	Lawful use of memorised information; no exploitation of specific contested trade secrets		
Finding of infringement	No – first instance Yes (partly) – appeal		
Penalty	Preliminary injunction		

### Norms

Sections 2, 4, 6 and 17 of the Trade Secrets Act 2019 (implementing Article 2(1) and Articles 4, 10 and 9 of the Trade Secrets Directive); Act against Unfair Competition (pre-2019 version).

### Facts

The defendant is a former employee of the claimant and was then employed by a competitor of the claimant. Both companies manufacture and sell plastic packaging including foam. The claimant alleged that the defendant had received and used beyond the termination of the relationship three documents regarding customers, sales amounts, revenues and product types, as well as personal notes regarding client relationships, including meeting minutes. The claimant alleged that the defendant had then used this information in his work for the new employer, particularly by contacting the same clients for advertising purposes. The defendant argued that he had lawfully used information he had memorised and that he was not using the files as alleged in his work for the new employer.

## **Substance**

After the first-instance judgement had dismissed the request for preliminary injunction, the appeal decision partly revoked and granted a preliminary injunction to cease and desist from use of the personal notes, while confirming the dismissal regarding the three allegedly infringing documents.

Regarding the personal notes on client relationships that the defendant had taken, the Court first established that the content of the personal notes (client contacts, sales figures, etc.) might constitute trade secrets and that the failure to present copies of these notes did not make the claim indeterminate as long as the notes were described. The contractual obligation to return ‘all work materials (e.g. notes ...)’ on the last day of employment was a sufficient ‘reasonable step’ of secrecy protection in the case of the notes.

In contrast, one document was not held to be a trade secret due to a failure to take ‘reasonable steps’ for secrecy protection. The Court construed this requirement in light of the underlying Trade Secrets Directive as an objective legal standard lower than ‘ideal protection’, to be determined considering the case-specific circumstances, particularly the type and value of the trade secret, its use, its development cost and relevance to the company, company size, information labelling, and the contracts in place with employees and partners. Although the notes were explicitly mentioned in the relevant contract clause, the obligation to return this document would result from a very general confidentiality clause, which itself was not held to be compliant with the standard of ‘reasonable steps’ due to its lack of specificity and because the claimant had not asserted this obligation over a period. Concerning two further documents, the Court found insufficient evidence for the alleged acquisition and possession of these documents after the defendant had returned the computer on which they were stored. At the claimant’s request, two exhibits concerning the contested trade secrets were declared to fall under confidentiality protection measures by the Court.

## **Comment on the relevance of the case**

This early appeal decision under the Trade Secrets Act 2019 influenced the interpretation of ‘reasonable steps’ for secrecy protection, the definition of trade secrets and several procedural aspects of trade secrets litigation. In particular, the legal standard of ‘reasonable steps’ has been cited by many scholars and later decisions.

## Case 12 (Italy: Sufficiency of Claims)

**F.I.M.I (Fabbrica impianti macchine industriali) S.P.A. – Officine Meccaniche Barni S.P.A. (23 June 2022)**

Court	Tribunal of Milan, specialised IP Court (Preliminary Trial)	MS	Italy
Year of decision	2022		
Parties' profiles	Claimant	Small/medium-sized enterprise	
	Defendant	Small/medium-sized enterprise (rival company)	
Commercial sector	Manufacturing: manufacture of machinery and equipment; Commercial: upstream info (supply chain management, external costs)		
Object of dispute	Manufacturing process and know-how of the claimant company concerning a patented plant for washing and degreasing metal strips		
Type of alleged infringing conduct	Patent infringement; unlawful acquisition and illegitimate use of trade secrets and of reserved know-how technologies		
Type of defence	Objection of good faith: system realised under the instructions, projects and layouts of the outsourcer; involuntary patent infringement		
Finding of infringement	No (insufficient evidence)		
Penalty	None Provisional measure: description under Article 129 of the Industrial Property Code		

### Norms

Articles 98 and 99 Industrial Property Code (implementing Article 2(1) and Articles 3 and 4 of the Trade Secrets Directive); Article 2598 of the Civil Code (unfair competition); Article 66 of the Industrial Property Code (Patent infringement).

### Facts

F.I.M.I. – Fabbrica Impianti Macchine Industriali S.p.A. is an Italian company known for the design, construction, and commissioning of plants and machinery for coil processing. In July 2021, it sued Officine Meccaniche Barni S.p.A. for the alleged infringement of a patent concerning a plant for

washing and degreasing metal strips, and for the unlawful acquisition of related trade secrets subsequently used for the realisation and commercialisation of similar plants developed with reserved know-how technologies.

At the preliminary trial, the claimant requested the granting *inaudita altera parte* (i.e. before hearing the defendant) of several provisional measures: description of the defendant's allegedly infringing products (plant and parts thereof) and methods of manufacturing, as well as technical and commercial documents; seizure of these products (including products held by third parties not named in the plaintiff's application); prohibition of the use of the claimant's patent and trade secrets; penalties; disclosure of information regarding any third party involved in the manufacturing, marketing and acquisition of these products; and the publication of the provisional decision.

### **Substance**

The judge partially upheld the application, granting *inaudita altera parte* the requested description (in accordance with Article 129 of the Industrial Property Code) but rejecting the other measures, on the basis that they would have been disproportionate at such an early stage of the preliminary trial. Once the description had been performed and the documents regarding the alleged infringement acquired, the judge heard the defendant and appointed a technical expert to assess whether there had been a *prima facie* violation of the patent and trade secrets.

At the end of the preliminary trial, the judge confirmed the description and found, on the basis of the information obtained, that the patent had been infringed. On this basis, the judge prohibited the defendant from further using the invention. However, the judge denied the requested publication of the preliminary decision, considering such an order inappropriate under the circumstances of the case (i.e. before a full trial of the case could take place). On the other hand, the judge rejected the plaintiff's application with regard to the claimed trade secret violation. Although the description confirmed that the defendant possessed documents apparently originating from the plaintiff, the judge abstained from deciding whether a trade secret infringement had also occurred. In this respect, the judge considered that the allegations provided by the claimant were not 'sufficiently clear' and that the confidential nature of the data needed further assessment. The decision shows that orders aimed at protecting evidence, on the one hand, and injunctive relief and/or seizure of infringing goods, on the other hand, have a different impact on a defendant's business and call therefore for a different evaluation of the requirements for their granting. For a description order to be issued, the plaintiff must offer sufficient evidence for a legitimate suspicion of an infringing activity by the

defendant. Indeed, the execution of the description measure is unlikely to negatively affect the defendant's business. On the other hand, injunctive measures, or even the seizure of infringing goods, have an immediate and disruptive effect on the defendant's business. Therefore, it may appear proportionate not to issue the latter measures while granting the former.

### **Comment on the relevance of the case**

This judgement fully explains the rationale and the limits underlying the granting of the descriptive measure for conservation of evidence: it is considered minimally invasive, while the other measures may be seen as more intrusive 'with a menace of an irreversible intrusion in the competitor's sphere, with even non-eliminable harmful consequences'. An aspect that deserves to be stressed is the rejection of injunctive measures related to the trade secret violation on the grounds that the claimant's allegations on the subject were not 'sufficient' or 'sufficiently clear' to justify acceptance. This issue is often raised, and it leaves open the important question of what the requirements are for an allegation to be considered sufficient, and consequently actionable, without simultaneously exposing the claimant to a significant risk of interference with their protected information.

### Case 13 (Italy: Unfair Competition)

**Flag S.P.A. v Mapei S.P.A. – Polyglass S.P.A.– Francesco d’Ursi – S.A.T. Engineering & C. S.A.S.**  
**(3 May 2017)**

Court	Court of Appeal of Milan	MS	Italy
Year of decision	2017		
Parties' profiles	Claimant	Medium-sized synthetic waterproofing (PVC) company	
	Defendant	Large plastic and rubber materials company	
Commercial sector	Manufacture of building materials		
Object of dispute	Confidential information concerning the production process		
Type of alleged infringing conduct	Illegal acquisition and use of confidential information		
Type of defence	Confidential information was generally known; reasonable steps were not taken		
Finding of infringement	No – first instance No – appeal		
Penalty	First instance: no penalty (all defendants discharged) Appeal: no penalty (all defendants discharged)		

#### Norms

Articles 98 and 99 of the Industrial Property Code (implementing Article 2(1) and Articles 3 and 4 of the Trade Secrets Directive); Article 2598 of the Civil Code (unfair competition).

#### Facts

Flag S.P.A. claimed that several employees who had left the company had transferred various confidential information to two competing companies, Mapei S.P.A. and Polyglass S.P.A. Shortly afterward, the competitors created a production plant similar to that used by Flag S.P.A. In particular, a gas heating system for plastic material was at the centre of the controversy.

#### Substance

The defendants argued that the information was generally known and reasonable steps to keep it secret had not been taken. In fact, they claimed, Flag S.P.A. had allowed visitors to take pictures and video of the plants.

On the relationship between trade secrets protection and the law of unfair competition, the judge affirmed that the clause ‘without prejudice to the law of unfair competition’ (*salva la disciplina della concorrenza sleale*) in Article 99 of the Industrial Property Code reflects the legislator’s intention to extend the protection of confidential information that meets the requirements of Article 98 (transposing Article 2(1) of the Trade Secrets Directive) not only to any third parties that acquire the information unlawfully, but also to competing companies acting abusively against the owner of the information. The term ‘without prejudice...’ should not be interpreted as introducing a distinct form of protection for information that does not meet the requirements of Article 98, namely to ‘confidential information’ that does not qualify as a trade secret. In other words, the protected information is only that which meets the statutory requirements derived from the Trade Secrets Directive. Protection derives from the law of unfair competition when the dispute is between competing firms and the defendant company has acted abusively. Reasoning differently would bring under protection, information that the legislator did not consider worthy of protection, or that in general may not even be secret. In the end, the appellate judge upheld the lower court’s decision that the existence of protectable trade secrets had not been proven, on the ground that Flag S.P.A. had not taken reasonable steps to protect the information and, in any case, the information was generally known.

**Comment on the relevance of the case**

This ruling shows that, when a dispute arises between two competing companies, protection under the law of unfair competition is granted only if the confidential information meets the three requirements laid down in the Trade Secrets Directive and the use or acquisition of the trade secrets by the competing company involves an act of unfair competition.



## Case 14 (Italy: Intelligent Systems Data)

**Leonardo Assicurazioni s.r.l. v Pro Insurance s.r.l. & A&A Insurance Broker s.r.l. & Unknown  
 (14 May 2018)**

Court	Tribunal of Milan, specialised IP Court (preliminary trial)	MS	Italy
Year of decision	2018		
Parties' profiles	Claimant	Insurance company (SME)	
	Defendant	Rival insurance companies and a former employee of the claimant	
Commercial sector	Financial and insurance activities		
Object of dispute	Downstream commercial and financial Information, such as customer lists, personal data, and policy data stored in dedicated intelligent software		
Type of alleged infringing conduct	Unlawful acquisition and disclosure of a secret portfolio containing personal data, stored in dedicated cloud software		
Type of defence	Lawful acquisition: independent discovery thanks to the defendant's interpersonal and professional skills; no TS exists: information is generally known; lack of passive entitlement as the defendant was not an entrepreneur (defence invoked by one of the accused former employees)		
Finding of infringement	Yes		
Penalty	<p>Description and assessment of the technical, commercial and accounting documentation (also IT format) concerning the alleged TS violation. Confirmation of the provisional measure granted on the judgement issued <i>inaudita altera parte</i></p> <p>Injunctive measures: provisional cessation/prohibition on use and seizure of infringing goods</p> <p>Sanction of EUR 5 000 for post-decision non-compliance</p> <p>Seizure of the infringing documentation</p>		

**Norms**

Articles 98 and 99 of the Industrial Property Code (implementing Article 2(1) and Articles 3 and 4 of the Trade Secrets Directive); Article 2598 of the Civil Code (unfair competition); Article 129 of the Industrial Property Code (description and seizure); Directive (EU) 943/2016 (Trade Secret Directive); Directive 2004/48/EC (Enforcement Directive).

## Facts

Leonardo Assicurazioni is a general agent of the insurance company Generali Italia in Milan. It has acquired a heritage of secret and sensitive information which is now stored in, and protected by, a software called SIAG. Through an intelligent system, the SIAG software automatically selects products according to the needs of clients, in an economic deployment of the database. In 2017, two companies, Pro Insurance s.r.l. (founded by a former subagent of the claimant) and A&A Insurance Broker, contacted the claimant's clients, having allegedly unlawfully acquired, used and disclosed the portfolio containing the secret information owned by Leonardo. Provisional measures were claimed, including description of all the material containing trade secrets or related to the database, and prohibition of the use of this information.

## Substance

With a provisional judgement issued *inaudita altera parte* (i.e. before hearing the defendant), the descriptive measure requested by the claimant was granted. In cross-examination, the defendants claimed that the protection was unenforceable due to the absence of secrecy and the lawful acquisition of the allegedly infringing information. Moreover, one of the former employees accused of unlawful acquisition raised an objection concerning a lack of passive entitlement. This last objection was rejected by the judge on the basis that Articles 98 and 99 of the Industrial Property Code granted an effective protection 'not only against unfair competition, but against anybody who unlawfully acquires, discloses or uses trade secrets'. Consequently, the application field is not bound by the subjective requirement of the quality of 'entrepreneur', as required under the law of unfair competition. On the contrary, according to both national and European Union law (i.e. the Enforcement Directive and the Trade Secrets Directive), protection applies against a wider range of subjects, including third parties, both directly and indirectly involved in the unlawful acquisition of trade secrets. The descriptive measure was validated, as the likelihood of success on the merits was confirmed by a relevant number of files concerning clients' portfolios that matched the related products, as processed by the software's AI technology, and that this peculiar combination of data granted a massive commercial benefit to the trade secret owner. As the court affirmed: 'The value and accessibility of such information should be assessed with respect not to individual data in isolation, but to the configuration and combination of the elements thereof.' On the basis of the examination of these files, it was considered that the unlawfully acquired information fulfilled all the substantive requirements of Articles 98 and 99 of the Industrial Property Code; while the evidence against A&A Insurance Broker and the natural persons was not considered sufficient for issuing other

provisional measures, the judge granted the following measures against Pro Insurance s.r.l.: (i) the injunctive measure of a prohibition on the use, disclosure and acquisition of trade secrets related to commercial strategies and clients' portfolios; (ii) a sanction for post-decision non-compliance; and (iii) seizure of the infringing documentation.

### **Comment on the relevance of the case**

This case must be considered an example of how the unlawful acquisition of trade secrets can affect the data economy, where the secret information is a source of massive commercial value not in itself, but because of the way it can be processed by AI technologies. The decision shows how the requirements of secrecy and commercial value of trade secrets are interpreted. The secret character of the information must be construed in light of the whole combination of elements, not of individual elements. Consequently, even if specific data are easily accessible, this does not negate the secret nature of the information in combination.

## Case 15 (Italy: Technical Measures)

**Sadepan Chimica S.R.L., Sadepan Chimica NV v Two natural persons (31 March 2021)**

Court	Tribunal of Milan	MS	Italy
Year of decision	2021		
Parties' profiles	Claimant	Large chemical company	
	Defendant	Natural persons: one former employee and one third person (the former sole shareholder of another company)	
Commercial sector	Chemical sector		
Object of dispute	Confidential information consisting of technical drawings, formulas and recipes about fertilisers and plants for their production, know-how, and managerial info (i.e. the profitability of production, risk evaluation, and production strategy)		
Type of alleged infringing conduct	Illegal acquisition and use of confidential information		
Type of defence	The information is generally known		
Finding of infringement	Yes – preliminary trial		
Penalty	Preliminary trial: prohibition on using the confidential information (TS); seizure of documents containing the abovementioned information; sanctions for post-decision non-compliance consisting of EUR 1 000 for each document used and EUR 100 for each day of delay		

**Norms**

Articles 98 and 99 of the Industrial Property Code (implementing Article 2(1) and Articles 3 and 4 of the Trade Secrets Directive), Article 2598 of the Civil Code (unfair competition) and Article 66 of the Industrial Property Code (patent infringement).

**Facts**

Sadepan Chimica S.R.L. and Sadepan Chimica NV, two companies within the same corporate group, sued a former employee (with whom their employment relationship ended in 2016) and MyP S.R.L. (due to deletion from the Commercial Register, the measure was ordered against the former sole shareholder of the company, who was also the wife of the accused former employee).

On 4 March 2019, the plaintiff companies brought proceedings before the Tribunal of Milan to request *inaudita altera parte* (i.e. before hearing the defendant) the description, seizure and cessation of the use of documents containing confidential information that came from Sadepan Chimica and that were allegedly illegally obtained and used by MyP S.R.L. The judge issued the requested decree on 11 March 2019. Subsequently, its content was confirmed by an order of March 2021.

### **Substance**

The defendants argued that the confidential information was generally known due to its disclosure by Sadepan Chimica, and that in any event the information was not their property. The Court did not consider this defence well-founded. Indeed, on the matter of the actual secrecy of the information, the Court considered that Sadepan Chimica had stored the information in a protection system that could ensure both physical and cyber security. The peculiarity of this decision is that the judge did not authoritatively affirm that reasonable steps had been taken (as is usually found in case-law), but engaged in a detailed assessment of the protective measures applied by Sadepan Chimica. In particular, physical security had been guaranteed by a lock on the access door of the data centre and a volumetric alarm. Cybersecurity, on the other hand, was guaranteed by several measures, including software restrictions on access to the company domain, a proprietary firewall system, a next-generation firewall (NGFW) appropriate to the nature and dimension of the company, a credential system for accessing corporate computers with a fragmentation of information based on duties of each employee, specific authorisations for accessing certain corporate data, and the requirement of complex passwords with a minimum of eight characters. All these measures were considered sufficient to provide ‘more than minimal protection of confidential information’ in the context of the use of such information by a large company with a significant turnover of employees. In addition, Sadepan Chimica had also used an automatic backup procedure to avoid data loss, which was mentioned by the Court to show the company’s diligence in its organisation of confidential information.

### **Comment on the relevance of the case**

With respect to the ‘reasonable steps’ requirement, the Court introduced a distinction between physical and cybersecurity measures for confidential information. Moreover, contrary to what is usually observed in the case-law, the Court engaged in a detailed assessment of the various measures put in place by the company to ensure that its information was kept secret.

## Case 16 (Luxembourg: Freedom of Information)

**PwC v Deltour, Halet & Perrin (15 March 2017)**

Court	Court of Appeal of Luxembourg	MS	Luxembourg
Year of decision	2017		
Parties' profiles	Claimant	Large financial corporation	
	Defendant	Natural persons: two former employees and a third person	
Commercial sector	Financial sector		
Object of dispute	Confidential information consisting of clients' Advanced Tax Agreements (ATAs) and tax returns		
Type of alleged infringing conduct	Illegal acquisition and disclosure of confidential information to the public in breach of the obligations of professional secrecy		
Type of defence	Whistleblowing defence; freedom of information; lack of intent to compete, damage or acquire unjust benefit		
Finding of infringement	Yes – first instance Yes – appeal No – cassation		
Penalty	First instance: 9 and 12 months' imprisonment Appeal: 6 months' imprisonment Cassation: no penalty (all defendants discharged)		

**Norms**

Articles 309 and 458-464 of the Penal Code; Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms; Articles 7 and 10 ECHR.

**Facts**

PricewaterhouseCoopers (PwC) is a multinational accounting firm incorporated in Luxembourg. In April 2012, the French journalist Eduard Perrin, in a television programme called 'Cash Investigation', disclosed leaked confidential documents about PwC's clients. An internal investigation by PwC identified two employees, Antoine Deltour and Raphaël Halet, as the authors of the leak. The employees were dismissed, but in November 2014 further tax documents of around 400 clients of PwC were leaked and published by the International Consortium of Investigative Journalists (ICIJ) in what became known as the 'Luxleaks'. PwC pressed criminal charges against the journalist for

violation of business secrecy and confidentiality, and against the former employees for theft, breach of professional secrecy, computer fraud, laundering, and disclosure of business secrets.

### **Substance**

The defendants acknowledged the unauthorised acquisition and disclosure of confidential information, but argued that all charges should be dismissed under the whistleblowing defence and the fundamental right of freedom of information. Indeed, the leaked documents, consisting mainly of Advanced Tax Agreements (ATAs) negotiated by PwC on behalf of major multinational corporations, exposed information of extraordinary public interest, such as the extent of tax-dodging practices in the Duchy of Luxembourg. However, at the time of the proceedings, neither EU nor Luxembourg law provided for special criminal exemptions for whistleblowing. Therefore, the lower courts examined the defence under general principles of criminal law which, *in absentia legis*, may allow for *sui generis* justifications to exonerate acts that normally constitute offences. In any event, the whistleblowing defence had only an ancillary role with regard to the charge of disclosure of business secrets. Under Luxembourg law at the time of the proceedings, trade secret infringement required that the infringer act with an intent to either compete with or damage the owner of the business secret or to acquire an improper benefit. The defendants in this case could argue that there had been no intention to compete, damage or acquire unjust benefit, since the purpose of the disclosure was purely to inform the general public about issues of public interest. This defence was successfully raised on appeal, where the Court rejected the first-instance judgement on the violation of business secrets (while upholding in part the judgement on the other charges). All allegations were eventually dropped by the Court of Cassation, which acquitted the defendants of all charges. In February 2023, in a follow-up case before the European Court of Human Rights (ECtHR), the Grand Chamber, overturning the decision of the Chamber, found that the Court of Appeal of Luxembourg had given an overly restrictive interpretation of the interest of the disclosed information for public opinion, thereby interfering with freedom of expression (Article 10 ECHR) in a way that had not been 'necessary in a democratic society'.

### **Comment on the relevance of the case**

This is a landmark judgement on the conflict between trade secrets protection and the fundamental right of freedom of information. Some elements of this conflict were later addressed by the EU legislator in Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Under this directive, the case

would constitute a lawful acquisition, use or disclosure of trade secrets under Article 3(2) of the Trade Secrets Directive.



## Case 17 (Spain: Criminal Proceedings)

**Tridecor SL v Raúl (8 March 2022)**

Court	Court of Appeal (Audiencia Provincial de Madrid)	MS	Spain
Year of decision	2022		
Parties' profiles	Claimant	SME	
	Defendant	Natural person (employee of a contracting company of the claimant)	
Commercial sector	Office furniture manufacturing and retail		
Object of dispute	Confidential commercial information: customer lists and data, financial information, invoices, sales summaries		
Type of alleged infringing conduct	Illegal acquisition and use of confidential information		
Type of defence	Exclusion of private prosecution; defencelessness due to failure to assess evidence; error in assessment of evidence; assessment of attempted acts; undue delay in providing the defence with a copy of the transcript of the first-instance hearing		
Finding of infringement	Yes – first instance Yes – appeal		
Penalty	First instance: 3 years' imprisonment, EUR 3 600, disqualification from standing for election for 3 years Appeal: 3 years' imprisonment, EUR 3 600, disqualification from standing for election for 3 years. The attenuating circumstance of undue delay was applied.		

**Norms**

Article 278 and Article 21.6 of the Criminal Code.

**Facts**

Raúl, a computer scientist, designed a webpage for the company HIJOS DE PENG, SL, a circumstance which he took advantage of to obtain, without authorisation, confidential information from TRIDECOR PENG, SL regarding its financial situation, invoices, balance sheets, and client

lists. Several years later, he offered commercial information of the company TRIDECOR PENG, in particular its client list, to another company called 360 DH, SL, dedicated to the same commercial activity, showing them the content of this information and requesting EUR 1 500 in exchange. The managers of 360 DH, SL suspected that the accused could have obtained this information illegally, so they informed the company TRIDECOR PENG, who then decided to report him. The National Police arrested Raúl in the vicinity of the company to which he was going to deliver the information and seized a USB drive containing information relating to invoices, complete lists of clients and their data, and other accounting and financial information of TRIDECOR PENG.

### **Substance**

The accused based his defence on the four arguments. First, he had only worked for HIJOS DE PENG (not for TRIDECOR), and the succession in business between HIJOS DE PENG SL and TRIDECOR had not been accredited. Second, TRIDECOR, HIJOS DE PENG and 360 HD (the company to which he intended to deliver the secret information) were a business conglomerate. Third, he worked for HIJOS DE PENG without signing any confidentiality agreement, and access to the information was the result of his work. It is also customary, in order to offer services to other companies, to exhibit the work that has been carried out previously, in order to demonstrate that one has sufficient training, without this implying any disclosure of content. Fourth, he was stopped with the USB drive, and the information was not exploited or used by 360 HD.

Both at first instance and on appeal, the courts reached similar conclusions. The defendant/appellant contradicted himself over the ownership of the result of the work. On the one hand, he claimed not to have worked for TRIDECOR, while on the other, he claimed that the information obtained from TRIDECOR was the result of his work. The courts also found that the only contractual relationship attested was with HIJOS DE PENG, but that this did not prevent the accused from accessing sensitive information from TRIDECOR. The courts also found that it had not been proved that TRIDECOR, HIJOS DE PENG, and 360 DH were a business conglomerate. Even if this were so, it would not authorise the accused to provide information to a different legal entity. Furthermore, the information was not necessary for the accused's work, which consisted of designing a webpage.

The courts also noted that the criminal offence applied is correct, as Article 278 of the Criminal Code does not require the existence of a contractual obligation of confidentiality (which is required in Article 279 of the Criminal Code). They also determined that it was not appropriate to apply the penalty in the degree of 'attempt', because the delivery actually took place. In fact, the offence was

consummated from the moment the information contained on the USB drive was delivered to the employee of 360 DH. In order for the offence of delivery of the secret information to be consummated, it was not necessary for the receiving company to have downloaded, used or incorporated the information, nor was it necessary for it to keep the media (the USB drive). Overall, the court considered it proven that the information had business value, because the transaction was fixed at EUR 1 500.

### **Comment on the relevance of the case**

This case reflects the use, more frequent in Spain than in other EU Member States, of criminal law as a tool for the protection of trade secrets. Criminal law, despite being a law of last resort, is not constrained by the definition of trade secrets in Article 39(2) of the TRIPS Agreement or Article 2(1) of the Trade Secrets Directive. In this case, there was no analysis of whether the information was generally known or easily accessible (although from the circumstances of the case it can easily be deduced that it was not), nor was there any assessment of whether reasonable steps had been taken to protect the information. The finding of infringement was based on a presumption that the information was secret and had value, because the defendant/appellant had wanted to sell it for a price, and on a series of proven facts regarding the acts carried out by the infringer to disclose the information to a third party.

## Case 18 (Spain: Presumed Acquisition)

### Tradingall Electronic S.L./Aplicaciones Electronicas y De Radiofrecuencia S.L: SAP BA 187/2019 (19 February 2019)

Court	Court of Appeal (Audiencia Provincial de Barcelona)	MS	Spain
Year of decision	2022		
Parties' profiles	Claimant	SME	
	Defendant	SME	
Commercial sector	Electronic, software		
Object of dispute	Source code of computer program		
Type of alleged infringing conduct	Illegal acquisition and use of confidential information		
Type of defence	No proof that the trade secret was illegally obtained		
Finding of infringement	Yes – first instance Yes – appeal		
Penalty	First instance: EUR 4 541 euros damages for research expenses, EUR 3 000 for moral damages. Regarding lost profits, EUR 20.46 per RADIOBAND team, EUR 17.39 per PROJECT 5X team, and EUR 8.13 per team of 2 PCBs was specified. Appeal: the amount was maintained.		

#### Norms

Articles 11 and 13 of the Unfair Competition Law.

#### Facts

The company ELECTRONICAS Y DE RADIOFRECUENCIA S.L sued the company TRADINGALL ELECTRONIC S.L./APLICACIONES ELECTRONICAS Y DE RADIOFRECUENCIA S.L for violation of trade secrets under Article 13 of the Spanish Unfair Competition Law, and for acts of imitation under Article 11 of the same law. In this case, two complex products were presented that were the object of imitation, both with integrated software that was allegedly protected as a trade secret. Although this was not explicitly indicated, it is understood that the information was source code.

### **Substance**

At first instance, the defendant was convicted of infringement of trade secrets and for acts of unfair competition (imitation). Specifically, it was considered that there had been an unlawful acquisition of this information by means of industrial espionage. On appeal, the appellant (who was convicted at first instance) claimed that the causal link had not been proved, and that it was not proven that he had access to the software or the source code of the plaintiff's electronic items. Despite this, the Court, on appeal, reached the same conclusion as the Court of First Instance. To the Appeal Court, in order to assess whether there has been an infringement of trade secrets, it is not necessary to find out whether there has been actual acquisition of the software. The applicant's and defendant's products and catalogues were (almost) identical. According to experts, the high number of coincidences between the two products could not have been accidental.

### **Comment on the relevance of the case**

This case concerns the unlawful acquisition of trade secrets. It is notable because the Court did not require direct evidence of access to prove that the trade secret in question had been illegally acquired. Instead, unlawful trade secret acquisition was assumed due to the extreme similarity between the products that resulted from the information. In applying this principle, the Court took into consideration the products' degree of complexity and their similarity.

## References

- Aplin, T. (2015).** Right to Property and Trade Secrets. In C Geiger (ed) *Research Handbook on Human Rights and Intellectual Property* (Edward Elgar, 2015), Ch. 22, pp. 421-437
- Aplin, T. (2017).** Trading data in the digital economy: trade secrets perspective. In *Trading Data in the Digital Economy: Legal Concepts and Tools* (pp. 59-72). Nomos Publishing.
- Commission Regulation (EU) 316/2014** of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements, OJ L 93, 28.3.2014, p. 17–23. (<https://eur-lex.europa.eu/eli/reg/2014/316/oj>).
- CREATe.org & PwC (2014).** *Economic Impact of Trade Secret Theft: A framework for companies to safeguard trade secrets and mitigate potential threats*. The Center for Responsible Enterprise and Trade.
- 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 (Text with EEA relevance), OJ C 226, 16/07/2014, p. 48. (<https://eur-lex.europa.eu/eli/dir/2016/943/oj>)
- Directive 2004/48/EC** of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (Text with EEA relevance); OJ L 157, 30/04/2004, p. 45-86. (<https://eur-lex.europa.eu/eli/dir/2004/48/oj>)
- Drexl, J. (2018).** Data access and control in the era of connected devices. *Report for BEUC (The European Consumer Organisation)*, p. 92.
- EISMEA (2022).** *Study on the Legal Protection of Trade Secrets in the Context of the Data Economy* (GRO/SME/20/F/206). European Innovation Council and SMEs Executive Agency (EISMEA), EUR EA-09-22-449-EN-N. (<https://op.europa.eu/en/publication-detail/-/publication/c0335fd8-33db-11ed-8b77-01aa75ed71a1/>)
- European IP Helpdesk (2022).** *Cybercrimes and trade secret protection*. European Commission European IP Helpdesk.
- Lee, N. (2021).** Hedging (into) Property?-Invisible Trade Secrets and International Trade in Goods. *Global Intellectual Property Protection and New Constitutionalism*, Mylly, T. & Griffiths, J. (eds.). Oxford University Press.
- NACE Rev. 2** – Statistical classification of economic activities in the European Community, Eurostat 2008 (<https://ec.europa.eu/eurostat/web/products-manuals-and-guidelines/-/ks-ra-07-015>).
- Niebel, R., de Martinis, L., & Clark, B. (2018).** The EU Trade Secrets Directive: all change for trade secret protection in Europe?. *Journal of Intellectual Property Law & Practice*, 13(6), 445-457; p 7.
- Nordberg, A. (2020).** Trade secrets, big data and artificial intelligence innovation: a legal oxymoron?. In *The Harmonization and Protection of Trade Secrets in the EU* (pp. 192-218). Edward Elgar Publishing.

**Noto La Diega, G., & Sappa, C. (2020).** *The Internet of Things at the Intersection of Data Protection and Trade Secrets. Non-Conventional Paths to Counter Data Appropriation and Empower Consumers.* European Journal of Consumer Law, Volume 2020, Issue 3, pp. 419-458

**Ohly, A. (2020).** Germany: the Trade Secrets Protection Act of 2019. In *The Harmonization and Protection of Trade Secrets in the EU* (pp. 103-123). Edward Elgar Publishing.

**Riis, T. (2020).** Enforcement of rights in trade secrets. In *The Harmonization and Protection of Trade Secrets in the EU* (pp. 219-236). Edward Elgar Publishing; p. 219.

**Schovsbo, J., & Riis, T. (2019).** To Be and Not to Be an IPR - the Protection of Trade Secrets in the EU. *41 European Intellectual Property Review* 401.

**Study on Trade Secrets and Confidential Business Information in the Internal Market.** Final Study. European Commission, April 2013. ('2013 Baker McKenzie Study'). ([https://single-market-economy.ec.europa.eu/publications/study-trade-secrets-and-confidential-business-information-internal-market\\_en](https://single-market-economy.ec.europa.eu/publications/study-trade-secrets-and-confidential-business-information-internal-market_en))

**The Baseline of Trade Secrets Litigation in the EU.** European Union Intellectual Property Office, 2018; ISBN 978-92-9156-251-0 doi: 10.2814/19869 TB-04-18-230-EN-N (<https://op.europa.eu/en/publication-detail/-/publication/25fe67c7-bc82-11e8-99ee-01aa75ed71a1>)

**The scale and impact of industrial espionage and theft of trade secrets through cyber.** European Commission, (prepared by PWC), December 2018. (<https://op.europa.eu/en/publication-detail/-/publication/4eae21b2-4547-11e9-a8ed-01aa75ed71a1>)

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## Glossary

EPO	European Patent Office
EU	European Union
EUIPO	European Union Intellectual Property Office
GDP	Gross domestic product
GII	Global Innovation Index (World Intellectual Property Organisation)
IoT	Internet of Things
IP	Intellectual property
IPR	Intellectual property right
NDA	Non-disclosure agreement
SME	Small and medium-sized enterprise
TS	Trade secret

## Annexes

### Annex I: Project Contributors

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## Annex II: Guide to Judgement Reporting Form

### Section A: Case Biographical Information

FIELD	INSTRUCTION
Case No. (National)	Unique Case Identification number/reference under national legal system
Case No. (ECLI)	European Case Law Identifier (if applicable). If there is no applicable ECLI number, leave it blank.
Parties' Names	Names of parties as they appear on the judgement in the format 'Claimant v Defendant'. Please be sure to follow the relevant national requirements on anonymisation where required. National norms should be followed in terms of how to list multiple names.
Case Type	Indicate whether this is a civil, criminal, or administrative case
Court Name (National Language)	Name of Court issuing the judgement in national language
Court Specialisation	Nature of the court: (General Civil Matters, Specialised IP Court, Specialised Labour Court, Specialised Competition Court, Other)
Court Name (English)	Translation of Court name in English
Instance	<p>Instance of case to which the judgement relates:</p> <p>'Preliminary trial' is to be used for judgements or orders on pre-trial determinations before merits of the case are heard. This might include determinations on the court accepting the substantive claims of the claimant, issuing provisional measures, and instruction regarding presentation of evidence.</p> <p>'First Instance' is to be used for judgements on the merits of the case as heard by lower courts.</p> <p>'Appeal' is to be used for judgements which relate to lower court determinations appealed to higher courts. Multiple levels of appeal can be included under this option.</p>
Connection to Previously Reported Case	If the judgement is linked to a 'case' that has already been reported (in a previous tab of the form), please state the previous 'connected' case here by referencing the previous 'Case Index' (automated in the header of form) or the previous 'Case Name'.
Date of Filing	Date on which plea/case was filed for consideration by the court in the format 'DD/MM/YYYY'.
Date of Judgement	Date on which the judgement was issued in the format 'DD/MM/YYYY'.

	It is noted that in some jurisdictions, the 'date of judicial decision' may be different from the 'date of decision publication'. Generally, the relevant date here is the 'date of publication', but one should report the date that is relevant for quoting cases in line with respective national norms.
Link to Judgement	Link to online version of the judgement (if available).
Case Language	Language in which judgement is published. In jurisdictions with multiple official languages, list all languages in which judgement was published.

**Section B: Legal Basis**

FIELD	INSTRUCTION
Legal Acts (National Language)	Identify national legislation(s) (in the national language) under which the action is brought.
<i>Legal Acts (English)</i>	Provide an English translation for the national legislation(s) identified above.
Other Norms (National)	Identify any national legal norms (e.g. civil procedure codes) which are central to the legal issues in the case. If possible, it is useful to also include a comment on the corresponding TSD provision.
<i>Other Norms (EU)</i>	Identify any EU legal norms (e.g. directives or regulations) which are referred to in the case.
<i>Other Norms (International)</i>	Identify any international legal norms (e.g. international treaties) which are referred to in the case.

**Section C: Party Details**

FIELD	INSTRUCTION								
Claimant Profile	<p>Select the option which best describes the description of the Primary/First Claimant:                      (1) Public Sector Organisation, (2) Administrative/Regulatory Body, (3) Private Sector: Micro-Enterprise, (4) Private Sector: SME, (5), Private Sector: Large Corp, (6) Private Sector: Unknown.</p> <p>As defined by EU Recommendation 2003/361, SMEs are defined as follows:</p> <table border="1" data-bbox="472 1794 1169 2009"> <thead> <tr> <th>Enterprise Category</th> <th>Staff Headcount</th> <th>Turnover</th> <th>Balance Sheet Total</th> </tr> </thead> <tbody> <tr> <td>Medium-sized</td> <td>&lt; 250</td> <td>≤ € 50 m</td> <td>≤ € 43 m</td> </tr> </tbody> </table>	Enterprise Category	Staff Headcount	Turnover	Balance Sheet Total	Medium-sized	< 250	≤ € 50 m	≤ € 43 m
Enterprise Category	Staff Headcount	Turnover	Balance Sheet Total						
Medium-sized	< 250	≤ € 50 m	≤ € 43 m						

	<table border="1"> <tr> <td>Small</td> <td>&lt; 50</td> <td>≤ € 10 m</td> <td>≤ € 10 m</td> </tr> <tr> <td>Micro</td> <td>&lt; 10</td> <td>≤ € 2 m</td> <td>≤ € 2 m</td> </tr> </table> <p>It is recognised that it will often be difficult to categorise the claimant when specific information about company size is not known. One should thus use their discretion accordingly. Where there is uncertainty on the size of the private company cannot be deduced, select '<i>Private Sector: Unknown</i>'.</p> <p><u>Important note for Criminal/Administrative Cases:</u> In criminal or administrative cases, as the equivalent to 'claimant' is a state entity (public prosecutor or regulatory body), insert information on the trade secret owner here.</p>	Small	< 50	≤ € 10 m	≤ € 10 m	Micro	< 10	≤ € 2 m	≤ € 2 m
Small	< 50	≤ € 10 m	≤ € 10 m						
Micro	< 10	≤ € 2 m	≤ € 2 m						
(+ <i>Second</i> ) <i>Claimant Profile</i>	If there is a second Claimant in the case, categorise their profile here.								
Defendant Profile	Select the option which best describes the description of the Primary/First Defendant, in relation to the Claimant: (1) Private Establishment, (2) Public Sector Organisation, (3) Employee, (4) Former Employee, (5) Natural Person (no employment connection), (6) Other Where the defendant's profile cannot be deduced (or there is uncertainty), select 'Other'.								
(+ <i>Second</i> ) <i>Defendant Profile</i>	If there is a Second Defendant in the case, categorise their profile here.								
(+ <i>Third</i> ) <i>Defendant Profile</i>	If there is a Third Defendant in the case, categorise their profile here.								
Parties' Relationship	Select the option which best describes the description of the contractual relationship between the Claimant and Defendant. If there are multiple Claimants/Defendants, choose the option which relates to the Primary/First Claimant/Defendant: (1) Contractual: Employer-Employee, (2) Contractual: Business Partnership, (3) Contractual: Other, (4) Contractual: Other, (5) No Contractual Relationship, (6) Unknown								
<i>Geographic Relationship</i>	Select the option which best describes the geographical relationship between the Claimant(s) and Defendant(s): (1) All parties in same Member State (same as jurisdiction of case), (2) All parties in same Member State (litigation in different State), (3) At least one party in different EU Member State, (4) At least one Non-EU Claimant with EU Defendant(s), (5) At least one Non-EU Defendant with EU Claimant(s), (6) All parties are Non-EU, (7) Unknown								

**Section D: Technical Information**

FIELD	INSTRUCTION
Type of Undisclosed Information	<p>Select the option which best describes the nature/category of the trade secret involved in the case. First generally identify if the trade secret should be considered of a 'commercial' or 'technical' nature.</p> <p>(1) Technical: Manufacturing process/know-how, (2) Technical: Formulas or recipes, (3) Technical: Software programme/algorithm, (4) Technical: Other,</p> <p>(5) Commercial: Financial info (pricing models, accounting data), (6) Commercial: Upstream info (supply chain management, external costs), (7) Commercial: Downstream info (distribution methods, advertising strategies, marketing data, customer lists), (8) Commercial: Other,</p> <p>(9) Prototypes/unreleased product designs, (10) Unknown</p> <p>As it is not possible to have an exhaustive list of trade secret categories, choose the category which is closest if the nature is known. If the nature of the information is known but does not fit into any of the categories (or more detailed information is known) provide an additional comment in the COMMENT column.</p>
(+) Type of Undisclosed Information	Where there are multiple trade secrets involved in the case, use this field to provide another applicable category of information.
Commercial Sector (NACE L1)	<p>Identify the commercial sector which closest relates to the economic activity for which the trade secret is relevant (or the activity of the Claimant).</p> <p>The categories here are derived from the '<i>Statistical classification of economic activities in the European Community (NACE)</i>' system.</p>
Commercial Sector (NACE L2)	If possible, give further detail on the commercial sector here, by selecting the 'NACE Level 2' category which is a subset of the 'NACE Level 1' category selected above.

**Section E: Primary Claim and Finding**

FIELD	INSTRUCTION
Claim: Type of Infringement	<p>Choose the option which best describes the nature of the primary claim brought by the claimant. These options are modelled after Article 4 (Unlawful Conduct) of the TS Directive.</p> <p>(1) Unauthorised Acquisition: Direct unauthorised access to files</p> <p>(2) Unauthorised Acquisition: Other practice contrary to honest commercial practices</p> <p>(3) Unauthorised Use/Disclosure: Based on unauthorised acquisition</p>

	<p>(4) Unauthorised Use/Disclosure: Breach of confidentiality agreement</p> <p>(5) Unauthorised Use/Disclosure: Breach of contractual constraint on use</p> <p>(5) Acquisition/Use/Disclosure with knowledge of unlawful acquisition by third party source</p> <p>(6) Other Claim</p>
<i>Evidence submitted to support claim</i>	Select the types of evidence that have been submitted in order to support the claim of infringement.
Defence Invoked	<p>Choose the option which best describes the primary defence raised by the defendant. These options include defences that the information does not qualify for protection, as well as provisions of Article 3 (Lawful Conduct) and Article 5 (Exceptions) of the TS Directive.</p> <p>(1) No TS exists: info is generally known, (2) No TS exists: info has no value, (3) No TS exists: reasonable steps not taken</p> <p>(4) No knowledge of unlawful acquisition by third-party source, (5) No restriction: NDA or contractual constraint is invalid</p> <p>(6) Lawful Acquisition: Independent discovery, (7) Lawful Acquisition: Info acquired by reverse engineering, (8) Lawful Acquisition: Exercise of workers' rights, (9) Lawful Acquisition: Other honest commercial practice, (10) Exception: Freedom of information/expression/media, (11) Exception: Revealing misconduct (whistleblowing), (12) Exception: Worker disclosure to representatives, (13) Exception: Protecting other legitimate interest, (14) Claim made outside of limitation period, (15) Other Defence</p> <p><i>Note: If no defence is explicitly raised by the defendant, but one is still considered by the court (e.g. the undisclosed information does not meet the legal standard to be a trade secret), still input this as the 'defence'.</i></p>
(+) Defence Invoked	Indicate any other defences raised.
<i>Evidence submitted to support defence</i>	Select the types of evidence that have been submitted in order to support the invoked defence
Provisional Measures Granted	<p>Indicate any provisional measures granted (i.e., in pre-trial before the case was heard on its merits). If the judgement is linked to a previously reported instance (specifically a pre-trial instance) and these details were already reported, there is no need to report on these again unless the measures were revoked in the current instance/judgement.</p> <p>The options for measures are derived from Article 10 of the TS Directive, as well as the Enforcement Directive:</p> <p>(1) No provisional measures granted, (2) Injunctive: Provisional cessation/prohibition on use, (3) Injunctive: Prohibition on production/exploitation of infringing goods, (4) Injunctive: Seizure of infringing goods, (5) Injunctive: Seizure/freezing of assets,</p>



	<p>(6) Non-Injunctive: Compensation guarantees for continued provisional use,</p> <p>(7) Information: Order to disclose info on origin/distribution network, (8) Evidence: order for presentation of evidence, (9) Evidence: order for communication of financial documents, (10) Evidence: order for communication of financial documents, (11) Evidence: order on preservation/non-destruction of evidence</p> <p>(12) Other provisional measure</p>
<i>(+) Provisional Measures Granted</i>	Indicate any further provisional measures granted.
<i>Provisional Measures Revoked</i>	Indicate whether any of the provisional measures that have been granted were subsequently revoked. In accordance with Article 11 of the TS Directive, revocation might be because of (1) applicant failure to institute proceedings on merits on time, or (2) information is deemed to no longer constitute a trade secret.
<i>Compensation for Revoked Measure</i>	If any provisional measures were revoked, use this field to indicate what compensation was given/paid by the claimant to the affected defendant for the effects of the precautionary measure.
Provision Measures Denied	Indicate any provisional measure for which the Claimant applied but was denied by the court.
Finding of Infringement	Indicate the main finding of the case in relation to the claim being analysed: i.e., if (1) Infringement was found (Claim upheld), (2) No Infringement was found (Defence upheld), or (3) No infringement found: Other Determination  Where no infringement is found, be sure to select which defence was upheld (first, second, or third defence), to match the correct defence inputted previously.  The option 'No infringement found: Other Determination' is meant for cases where the claimant fails on grounds other than defences considered by the court.
<i>(+) Finding of Infringement</i>	Indicate further details on finding – particularly where more than one defence is upheld.
Bad Faith Counterclaim	Indicate whether a counterclaim was raised by the defendant that the claimant engaged in an abuse of process (Article 7 of the TS Directive). If such a counterclaim was made, indicate whether or not it was successful, and the grounds for such success. Options:  (1) No bad faith counterclaim made, (2) Bad Faith Counterclaim Made: Counterclaim rejected, (3) Bad Faith Counterclaim Successful: Damages paid to respondent, (4) Bad Faith Counterclaim Successful: Sanctions on applicant, (5) Bad Faith Counterclaim Successful: Publication of judicial

	information (i.e., the claimant found to abuse the process is required at their own cost to publish information on the finding).
Measures Granted on Merits	<p>Where the claimant is successful and there is a finding of infringement, indicate the relief measure granted to the claimant. Measures include injunctive, corrective, or damages. These options are mainly based on Articles 12 – 15 of the TS Directive. Options for criminal sanctions should only be selected when the case is reported as explicitly a criminal case.</p> <p>(1) Injunctive: Cessation/prohibition of TS use, (2) Injunctive: Prohibition on production/use of infringing goods, (3) Injunctive: Destruction of Documents, (4) Injunctive: No injunction, but alternative of pecuniary compensation (Art 13(3));</p> <p>(5) Corrective Measure: Removal/Recall of goods, (6) Corrective Measure: Modification of goods (denying infringing quality), (7) Corrective Measure: Destruction of goods</p> <p>(8) Damages: Based on economic prejudice (lost profits / unfair profits), (9) Damages: Based on economic prejudice and non-economic factors (moral prejudice), (10) Damages: Based on economic prejudice (market-based royalties as proxy), (11) Damages: Pre-established sum, (12) Damages: Basis not specified</p> <p>(13) Criminal Sanction: Fine, (14) Criminal Sanction: Imprisonment, (15) Criminal Sanction: Other</p> <p>(16) Publication of judicial decision (Art 15), (17) Sanctions for post-decision non-compliance</p>
(+) Measures Granted	Indicate other relief measures granted.
Quantum of Damages	Where damages are granted, indicate the quantum granted (be sure that the correct option is selected for the 'measures granted' field above depending on the methodology used to calculate damages. The entry in this field should be a number only.
Damages Currency	Indicate currency for damages reported above.

**Section F/G: Secondary/Third Claim and Finding**

Use these sections to report on the details of other claims raised by the claimant, and the respective defences, findings, and measures granted. The instructions are the same as for the previous section.

**Section H: Other (Non-TS) Claims Raised**

FIELD	INSTRUCTION
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Other Claims Raised (Successfully)	Indicate any other claims (besides trade secret infringement) that were successfully raised in this case (i.e. that resulted with a finding in favour of the claimant). In particular, these should be claims arising from the same allegedly infringing actions. These might include IP or non IP breaches. (1) Breach of Employment Law, (2) Breach of Contract Law, (3) Breach of Privacy, (4) Breach of Cybersecurity, (5) Physical Trespassing/Unauthorised Entry (6) IP: Copyright Infringement, (7) IP: Patent Infringement, (8) IP: Database Right Infringement, (9) Unfair Competition, (10) Other
(+) Other Claims Raised (Successfully)	Indicate other non-TS claims raised with success in the proceedings.
Other Claims Raised (Unsuccessfully)	Indicate any other claims (besides trade secret infringement) that were unsuccessfully raised in this case (i.e. that resulted with a finding in favour of the defendant).
(+) Other Claims Raised (Unsuccessfully)	Indicate other non-TS claims raised without success in the proceedings.

**Section I: Procedural Preservation of Confidentiality**

FIELD	INSTRUCTION
Confidentiality Measure Taken	Indicate the confidential measures taken by the court to ensure that during the course of the legal proceedings, the secrecy of the information under dispute is not compromised: (1) No information on confidentiality-preservation measure, (2) Limit on access to TS-containing documents, (3) Limit on access to judicial hearings, (4) Publication of redacted decision
(+) Confidentiality Measure Taken	Indicate other confidential measures taken.

## Annex III: List of Cases

### Austria

Der Oberster Gerichtshof, 4Ob188/20f

Der Oberster Gerichtshof, 4Ob182/20y

Der Oberster Gerichtshof, 9ObA7/20z

Der Oberster Gerichtshof, 8ObA49/22x

Der Oberster Gerichtshof, 2Ob68/22x

### Belgium

Ondernemingsrechtbank van Antwerpen, B/19/29

Ondernemingsrechtbank van Antwerpen, A/18/3273

Ondernemingsrechtbank van Antwerpen, A/19/04068

Ondernemingsrechtbank van Antwerpen, A/19/03560

Ondernemingsrechtbank van Antwerpen, A/19/06160

Ondernemingsrechtbank van Antwerpen, A/19/04425

Ondernemingsrechtbank van Antwerpen, A/20/41

Ondernemingsrechtbank van Antwerpen, A/20/86

Ondernemingsrechtbank van Antwerpen, A/21/1651

Ondernemingsrechtbank van Antwerpen, A/21/2693

Ondernemingsrechtbank van Antwerpen, A/21/4462

Ondernemingsrechtbank van Antwerpen, A/21/116

Ondernemingsrechtbank van Antwerpen, A/20/5931

Ondernemingsrechtbank van Antwerpen, A/21/4306

Ondernemingsrechtbank van Brussel, A/18/02577

Ondernemingsrechtbank van Brussel, A/19/01293

Ondernemingsrechtbank van Brussel, A/19/04032

Ondernemingsrechtbank van Brussel, A/19/01569

Ondernemingsrechtbank van Brussel, A/19/04686

Ondernemingsrechtbank van Brussel, A/20/00408

Ondernemingsrechtbank van Brussel, A/21/0060

Ondernemingsrechtbank van Brussel, A/21/03327

Ondernemingsrechtbank van Gent, A/18/01945

Ondernemingsrechtbank van Gent, A/19/00515

Ondernemingsrechtbank van Gent, A/19/00754

Ondernemingsrechtbank van Gent, A/19/01202

Ondernemingsrechtbank van Gent, A/19/01402

Ondernemingsrechtbank van Gent, A/19/01202

Ondernemingsrechtbank van Gent, A/19/01687  
Ondernemingsrechtbank van Gent, A/19/03586  
Ondernemingsrechtbank van Gent, A/20/00248  
Ondernemingsrechtbank van Gent, A/19/03789  
Ondernemingsrechtbank van Gent, A/20/00548  
Ondernemingsrechtbank van Gent, A/19/03389  
Ondernemingsrechtbank van Gent, A/19/02151  
Ondernemingsrechtbank van Gent, A/20/01293  
Ondernemingsrechtbank van Gent, A/19/03753  
Ondernemingsrechtbank van Gent, A/21/00341  
Ondernemingsrechtbank van Gent, WK-A/21/01069  
Ondernemingsrechtbank van Gent, A/21/01005  
Ondernemingsrechtbank van Gent, A/21/01069  
Ondernemingsrechtbank van Gent, A/21/02722  
Ondernemingsrechtbank van Bergen, A/18/00772  
Hof van beroep Antwerpen, AR 2947, AR 2015/AH/237  
Hof van beroep Antwerpen, 2020/AR/1313, 2020/AR/1445  
Hof van beroep Gent, 2019/AR/1789  
Hof van beroep Gent, 2020/AR/620, 2020/AR/621  
Hof van beroep Gent, 2020/AR/1714  
Arbeidsrechtbank Antwerpen, AR 19/361/A  
Arbeidsrechtbank Antwerpen, 18/2665/A  
Arbeidsrechtbank Antwerpen, 20/793/A  
Arbeidshof Brussel, 2020/AB/334  
Arbeidshof Gent, 2020/KG/1  
Rechtbank van koophandel Gent, A/15/00293  
Ondernemingsrechtbank van Antwerpen, A/19/1255  
Hof van beroep Antwerpen, 2019/AR/1182  
Ondernemingsrechtbank van Antwerpen, A/18/3273  
Ondernemingsrechtbank van Antwerpen, A/19/7726  
Ondernemingsrechtbank Brussel, A/20/01623

**Bulgaria**

Районен съд - Варна , 9977/2016  
Районен съд - Пловдив , 10385/2016  
Софийски градски съд, 6392/2016  
Върховен административен съд, 1077/2017  
Върховен административен съд, 5451/2016  
Върховен административен съд, 8260/2017  
Върховен административен съд, 11976/2018

Върховен административен съд, 563/2018  
Върховен административен съд, 1770/2017  
Върховен административен съд, 969/2016  
Окръжен съд - Пловдив , 56/2018  
Апелативен съд - Пловдив , 747/2018  
Върховен административен съд, 13852/2014  
Върховен административен съд, 8252/2018  
Върховен административен съд, 6514/2016  
Върховен административен съд, 10100/2018  
Софийски районен съд, 32550/2017  
Административен съд - София област , 1280/2019  
Районен съд - Бургас , 9962/2019  
Върховен административен съд, 5954/2018  
Върховен административен съд, 12700/2018  
Окръжен съд - Враца, 115/2021  
Административен съд - София област , 1556/2019  
Върховен административен съд, 7125/2020  
Административен съд - София област , 816/2020  
Върховен административен съд, 1986/2021  
Административен съд - София област , 1086/2019  
Върховен административен съд, 6474/2020  
Върховен административен съд, 850/2021  
Административен съд - София област , 335/2019  
Върховен административен съд, 8099/2021  
Административен съд - София област , 1594/2019  
Върховен административен съд, 8904/2020  
Административен съд - София област , 1050/2021  
Административен съд - София област , 939/2021  
Административен съд - София област , 1100/2020

## Croatia

Trgovački sud u Zagrebu, P-2122/2021  
Trgovački sud u Osijeku, P-178/2022  
Županijski sud u Zadru, Gž R-22/2022-2  
Općinski sud u Splitu, K-813/16  
Vrhovni sud Republike Hrvatske, Rev 2865/2018  
Visoki trgovački sud Republike Hrvatske, Pž 120/2022  
Županijski sud u Splitu, Gž R 475/2018  
Županijski sud u Osijeku, Gž R 199/2017  
Županijski sud u Rijeci, Gž R 1239/2020

Vrhovni sud Republike Hrvatske, Revr 216/2017  
Županijski sud u Splitu , Gž R-475/2018  
Vrhovni sud Republike Hrvatske, Revr-80/2016  
Općinski sud u Splitu, Pr-329/2013  
Visoki trgovački sud Republike Hrvatske, Pž-3028/2018  
Visoki trgovački sud Republike Hrvatske , Pž-3571/2022

### **Cyprus**

Επαρχιακό Δικαστήριο Λεμεσού, 3574/16  
Επαρχιακό Δικαστήριο Λεμεσού, 5467/2009  
Επαρχιακό Δικαστήριο Λευκωσίας, 115/19  
Επαρχιακό Δικαστήριο Λευκωσίας, 400/22

### **Czech republic**

Nejvyšší soud, 5 Tdo 1130/2018  
Nejvyšší správní soud, 2 As 86/2019-78  
Nejvyšší soud, 5 Tdo 501/2018

### **Denmark**

Sø- og Handelsretten, BS-9719/2017-SHR  
Østre Landsret, BS-34317/2020  
Retten i Kolding, BS-39657/2021-KOL  
Københavns Byret, BS-8705/2020  
Østre Landsret, BS-24656/2020  
Sø- og Handelsretten, BS-4036/2018-SHR  
Sø- og Handelsretten, BS-4037/2018-SHR  
Sø- og Handelsretten, A-47-17  
Sø - og Handelsretten, BS-22486/2020-SHR  
Sø - og Handelsretten, BS-40573/2021-SHR  
Sø - og Handelsretten, BS-9343/2017-SHR  
Sø - og Handelsretten, BS-27010/2021-SHR  
Sø - og Handelsretten, BS-34644/2020-SHR  
Sø - og Handelsretten, BS-17442/2021-SHR  
Sø - og Handelsretten, BS-14983/2020-SHR  
Sø - og Handelsretten, BS-49398/2021-SHR  
Sø - og Handelsretten, BS-9628/2020-SHR

Sø - og Handelsretten, BS-58343/2019-SHR

Sø - og Handelsretten, BS-9491-2019-SHR

### **Estonia**

Riigikohus, 1-18-4590/82

Tallinna Ringkonnakohtus, 1-18-4590/63

Harju Maakohus Tallinna kohtumaja, 1-18-4590/43

Riigikohus, 3-2-1-36-17

Tallinna Ringkonnakohus, 2-17-3310/106

Tartu Maakohus, 2-19-10223/47

Tartu Ringkonnakohus, 2-19-10223/60

Harju Maakohus, 2-17-4218/56

Tallinna Ringkonnakohtu, 2-17-4218/66

Harju Maakohus, 2-17-6960/30

Tallinna Ringkonnakohus, 2-17-6960/43

Harju Maakohus, 2-18-5087/14

Tallinna Ringkonnakohus, 2-18-5087/22

Tartu Maakohus, 1-17-2359/93

Tartu Ringkonnakohus, 1-17-2359/104

Harju Maakohus, 2-19-2933/75

Harju Maakohus, 2-20-3919/141

### **Finland**

Markkinaoikeus, MAO:398/20

Markkinaoikeus, MAO:59/20

Markkinaoikeus, MAO:512/19

Markkinaoikeus, MAO:11/20

Markkinaoikeus, MAO:8/22

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Vaasan Hovioikeus, Vaasan HO 12.05.2020 117037

Korkein oikeus, KKO:2022:16

### **France**

Cour d'appel de Toulouse, 369/2022



Conseil d'Etat, 456503  
Cour de cassation , 2021925  
Cour d'Appel de Paris, 20/03403  
Cour de Cassation, 20-12.885  
Cour d'Appel d'Aix-en-Provence, 21/16030  
Cour d'Appel de Paris, 21/07242  
Cour d'Appel de Paris, 22/08310  
Tribunal de Commerce de Paris, 2019036759  
Cour d'Appel de Paris, 22/08306  
Cour d'appel de Colmar, 20/00672  
Cour d'appel d'Anger, 22/00812  
Cour d'Appel de Paris, 20/16706  
Cour d'Appel de Dijon, 21/00290  
Cour d'Appel de Rennes, 19/03509  
Cour d'Appel de Paris, 16/20542  
Tribunal de commerce de Paris, 2019036759  
Cour d'Appel de Grenoble, 20/03882  
Cour d'appel de Toulouse, 21/03308  
Cour d'appel de Saint-denis de la Réunion, 17/01517  
Cour d'appel de Grenoble, 18/00754  
Cour d'appel de Paris, RG 17/12908  
Cour d'appel d'Amiens, 17/00362  
Cour d'appel d'Orleans , RG 17/02308  
Cour d'Appel de Paris, 18/04573  
Cour d'appel de Paris, 18/21325  
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Cour d'appel de Grenoble, 21/01415  
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Cour d'appel de Rennes, 20/03384  
Cour d'appel de Pau, 22/01048  
Cour d'appel de Bordeaux, 20/02136  
Cour d'appel de Paris, 17/07151  
Cour d'Appel d'Aix en Provence, 15/15982  
Cour d'Appel de Paris, RG 17/03739  
Cour de Cassation, Première Chambre Civile, 10624 F  
Tribunal de Commerce de Compiègne, XXX  
Tribunal de Commerce de Romans sur Isère, RG 2017J27  
Cour d'Appel de Grenoble, RG 19/00586  
Tribunal de Commerce de Lille Métropole, 2018000051  
Cour d'Appel de Douai, RG 19/01244  
Tribunal de grande instance de Paris, CT01986  
Tribunal de commerce de Paris, RG 2016061925

Tribunal de Commerce de Chambéry, RG 2019R00120  
Cour d'appel de Chambéry, 20/00550  
Tribunal de Commerce de Bordeaux, RG 2016F000645  
Cour d'Appel de Bordeaux, 17/04435  
Tribunal de Commerce de Nancy, RG 2017/003744  
Cour d'Appel de Nancy, RG 2017/003744 & 2017/005441  
Tribunal de Grande Instance de Paris, RG 16/07057  
Tribunal de Grande Instance de Paris, RG 16/04323  
Cour de cassation, N° 10624 F

### Germany

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Oberlandesgericht Karlsruhe, Docket no. 6 W 15/22 / Published in: GRUR 2022, 1004  
Arbeitsgericht Hamburg, Docket no. 4 Ca 356/20 / Published in: BeckRS 2022, 4994  
Arbeitsgericht Aachen, Docket no. 8 Ca 1229/20 / Published in; MMR 2022, 995  
Bundesgerichtshof, Docket no. I ZR 186/20 / Published in GRUR-RS 2022, 13544  
Oberlandesgericht Düsseldorf, Docket no. 15 SA 1/21 / Published in: GRUR-RS 2021, 38391  
Landesarbeitsgericht Köln, Docket no. 9 Ta 107/21 / Published in: ZUM-RD 2022, 450  
Landesarbeitsgericht Baden-Württemberg, Docket no. 4 SaGa 1/21 / Published in: CB 2021, 500  
Bundesgerichtshof, Docket no. I ZR 114/21 / Published in: BeckRS 2022, 17770  
Arbeitsgericht Hamburg, Docket no. 4 Ca 17/21 / Published in: GRUR-RS 2021, 46268  
Landgericht Arnsberg, Docket no. 1 O 327/20 / Published in: GRUR-RS 2021, 19257  
Landesarbeitsgericht Hamm, Docket no. 10 SaGa 9/21 / Published in: BeckRS 2021, 41734  
Oberlandesgericht Karlsruhe, Docket no. 4 U 1/21 / Published in: GRUR-RS 2021, 23997  
Oberlandesgericht Düsseldorf, Docket no. 15 U 6/20 / Published in: MMR 2022, 68  
Landesarbeitsgericht Rheinland-Pfalz, Docket no. 3 SaGa 8/20 / Published in: BeckRS 2021, 15024  
Landgericht Kempten, Docket no. 1 HK O 503/20 / Published in: BeckRS 2020, 45020  
Oberlandesgericht Frankfurt, Docket no. 6 W 113/20 / Published in: GRUR-RR 2021, 229  
Oberlandesgericht Stuttgart, Docket no. 2 U 575/19 / Published in: GRUR-RS 2020, 35613  
Landesarbeitsgericht Düsseldorf, Docket no. 12 SaGa 4/20 / Published in: GRUR-RS 2020, 23408  
Landesarbeitsgericht Köln, Docket no. 2 SaGa 20/19 / Published in: BeckRS 2019, 44850  
Oberlandesgericht Düsseldorf, Docket no. 2 U 34/19 / Published in; GRUR-RS 2019. 33225  
Oberlandesgericht München, Docket no. 29 W 940/19 / Published in: NJW-RR 2019, 1258  
Oberlandesgericht Frankfurt, Docket no. 11 U 115/21 / Published in: juris  
Arbeitsgericht Gera, Docket no. 3 Ga 2/22 / Published in: juris  
Landgericht Köln, Docket no. 84 O 93/16 / Published in: GRUR-RS 2020, 53513  
Landesarbeitsgericht Mecklenburg-Vorpommern, Docket no. 5 Sa 152/19 / Published in: BeckRS 2020, 37500  
Oberlandesgericht Brandenburg, Docket no. 6 U 42/19 / Published in: GRUR-RS 2020, 35904  
LG Frankfurt a. M., Docket no. 5/12 Qs 4/19 / Published in: BeckRS 2019, 56679  
LAG Rheinland-Pfalz, Docket no. 3 Sa 349/18 / Published in: BeckRS 2019, 31176

Oberlandesgericht Köln, Docket no. 15 U 204/18 / Published in: BeckRS 2019, 9379  
 Landgericht Köln, Docket no. 31 O 25/15 / Published in: BeckRS 2018, 46336  
 OLG Stuttgart, Docket no. 2 U 30/18 / Published in: BeckRS 2018, 36029  
 Landesarbeitsgericht Düsseldorf, Docket no. 8 Sa 379/17 / Published in BeckRS 2018, 47300  
 Bundesarbeitsgericht, Docket no. 10 AZR 780/16 / Published in: BeckRS 2018, 18870  
 Landesarbeitsgericht Rheinland-Pfalz, Docket no. 5 Sa 267/17 / Published in BeckRS 2018, 17962  
 Bundesgerichtshof, Docket no. I ZR 118/16 / Published in NJW-RR 2019, 159 "Hohlfasermembranspinnanlage II"  
 Bundesgerichtshof, Docket no. I ZR 161/16 / Published in GRUR 2018, 535 "Knochenzement I"  
 Landesarbeitsgericht Hessen, Docket no. 18 Sa 1109/19 / Published in BeckRS 2020, 26850  
 Kammergericht Berlin, Docket no. 10 U 96/17 / Published in BeckRS 2020, 40938

### Greece

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 Fővárosi Ítéltábla, 8.Pf.20.333/2020/6  
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 Győri Ítéltábla, Gf.IV.20.192/2019/6  
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 Kúria, Pfv.III.20.509/2022/4  
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 Fővárosi Törvényszék, 3.P.21.385/2019/67  
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 Debreceni Ítéltábla, Mf.I.50.012/2022/5

## **Ireland**

High Court of Ireland, [2020] IEHC 256

High Court of Ireland, [2021] IEHC 136

## **Italy**

Corte d'Appello di Milano, Prima sezione civile, 27/11/2018

Tribunale di Milano, sezione specializzata in materia di impresa, 27/10/2016

Corte d'Appello di Milano, 19/12/2019

Tribunale di Milano, sezione specializzata in materia d'impresa 'A' civile, 17/08/2017

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Tribunale di Milano, Sezione specializzata in materia di impresa, 02/11/2017

Tribunale di Milano, 18/09/2017

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Tribunale Ordinario di Bologna, Sezione specializzata in materia di impresa civile, 04/07/2017  
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## Latvia

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 Zemgales rajona tiesa, C73313221  
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 Latvijas Republikas Augstākā tiesa, SKC-[A]/2021

Latvijas Republikas Augstākā tiesa, SKC-46/2022 (C29548817)  
Latvijas Republikas Augstākā tiesa, SKC-188/2022 (C33369520)  
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### **Lithuania**

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### **Luxembourg**

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### **Malta**

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### **Netherlands**

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 Rechtbank Den Haag, C/09/553876/HA ZA 18-617  
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 Rechtbank Den Haag, C/09/581106/KG ZA 19-968  
 Rechtbank Limburg, C/03/261043/HA ZA 19-120  
 Rechtbank Amsterdam, C/13/678789/KG ZA 20-63  
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 Rechtbank Rotterdam, C/10/620477/HA ZA 21-520  
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 Rechtbank Rotterdam, C/10/642926/KG ZA 22-696  
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## Poland

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## Portugal

Tribunal da Relação de Lisboa, 159/19.3YUSTR-E.L1-PICRS  
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 Tribunal da Relação do Porto, 9452/18.1T8PRT.P1

Tribunal da Relação de Lisboa, 292/20.9YUSTR-A.L1-PICRS  
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 Tribunal Central Administrativo Sul, 399/22.8BESNT  
 Tribunal Central Administrativo Sul, 2232/18.6BELSB  
 Tribunal da Relação de Lisboa, 74/19.0YQSTR.L1-PICRS  
 Tribunal da Relação de Lisboa, 228/18.7YUSTR-G.L1-3

## Romania

Tribunalul București, 37812/3/2021  
 Tribunalul București, 25191/3/2021  
 Tribunalul București , 21211/3/2018  
 Curtea de Apel București, 21211/3/2018  
 Tribunalul Timiș, 5100/30/2020  
 Tribunalul București, 16369/3/2021  
 Curtea de Apel București, 16369/3/2021  
 Tribunalul Ialomița, 37/98/2020  
 Curtea de Apel Cluj, 3212/105/2019  
 Tribunalul Timiș, 661/30/2021  
 Tribunalul Comercial Cluj, 165/1285/2019  
 Tribunalul Dolj, 6493/63/2018  
 Curtea de Apel Craiova, 6493/63/2018  
 Tribunalul București, 40781/3/2018\*  
 Tribunalul București, 40781/3/2018\*  
 Curtea de Apel București, 49974/3/2012\*  
 Înalta Curte de Casație și Justiție, 49974/3/2012\*  
 Curtea de Apel București, 49974/3/2012\*  
 Tribunalul București, 4820/3/2019  
 Curtea de Apel București, 4820/3/2019  
 Tribunalul București, 44778/3/2015  
 Tribunalul București, 11503/3/2018  
 Tribunalul București, 5086/3/2019\*  
 Tribunalul Comercial Cluj, 372/1285/2017  
 Curtea de Apel Cluj, 372/1285/2017  
 Tribunalul București, 22605/3/2019  
 Tribunalul Comercial Mureș, 87/1371/2016  
 Tribunalul Harghita, 511/96/2019  
 Tribunalul Comercial Cluj, 166/1285/2019  
 Curtea de Apel Cluj, 166/1285/2019  
 Tribunalul București, 37107/3/2016  
 Curtea de Apel București, 37107/3/2016

Tribunalul Buzău, 2084/114/2018  
Curtea de Apel Ploiești, 2084/114/2018  
Tribunalul Argeș, 3334/93/2016  
Tribunalul Bucuresti, 29835/3/2017  
Timiș Tribunal, 9361/30/2013  
Curtea de Apel Timisoara, 9361/30/2013  
Curtea de Apel Targu Mures, 87/1371/2016  
Tribunalul Bucuresti, 5293/3/2017  
Curtea de Apel Bucuresti, 5293/3/2017\*  
Tribunalul Neamt, 2228/103/2017  
Curtea de Apel Bacau, 2228/103/2017  
Tribunalul Dolj, 8793/63/2015  
Curtea de Apel Craiova, 8793/63/2015

### **Slovakia**

Krajský súd v Bratislave, 7Cbs/1/2011  
Krajský súd v Žiline, 14Cob/21/2019  
Okresný súd Košice II, 35Cb/18/2019  
Okresný súd Košice I, 30Cb/90/2021  
Okresný súd Košice, 26Cb/19/2020  
Krajský súd v Banskej Bystrici, 41CoPv/9/2016  
Okresný súd Košice I, 26Cb/45/2020

### **Slovenia**

Višje sodišče v Kopru, VSK Sodba Cpg 22/2021  
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Višje sodišče v Ljubljani, VSL Sklep I Cpg 122/2022  
Višje delovno in socialno sodišče, VDSS Sodba Pdp 640/2021  
Višje delovno in socialno sodišče, VDSS Sodba Pdp 342/2021  
Višje sodišče v Ljubljani, VSL Sklep I Cp 294/2021  
Višje sodišče v Ljubljani, VSL Sklep IV Ip 381/2021  
Višje delovno in socialno sodišče, VDSS Sodba in sklep Pdp 510/2020  
Višje sodišče v Ljubljani, VSL Sklep V Cpg 337/2020  
Višje delovno in socialno sodišče, VDSS Sodba Pdp 807/2019  
Višje sodišče v Ljubljani, VSL Sklep I Cp 178/2020  
Višje sodišče v Ljubljani, VSL Sodba II Cp 2198/2018  
Višje sodišče v Ljubljani, VSL Sodba I Cpg 783/2018  
Višje sodišče v Ljubljani, VSL Sklep V Cpg 333/2018

Višje sodišče v Celju, VSC Sodba in sklep Cpg 205/2017  
Višje sodišče v Ljubljani, VSL Sklep V Cpg 1094/2017  
Višje sodišče v Ljubljani, VSL Sodba II Cpg 59/2017  
Višje sodišče v Ljubljani, VSL Sklep V Cpg 187/2020  
Višje sodišče v Mariboru, VSM Sklep IV Kp 8816/2017  
Višje sodišče v Ljubljani, VSL Sodba in sklep I Cpg 1201/2016

## Spain

Juzgado de lo Mercantil nº7 de Barcelona, SJM B 11199/2022  
Tribunal Supremo, STS 206/2022  
Audiencia Provincial Vizcaya, SAP BI 240/2022  
Audiencia Provincial de Barcelona, SAP B 3317/2022  
Audiencia Provincial de Barcelona, SAP B 9029/2022 -  
Juzgado de lo Mercantil de Barcelona Secc 7, SJM B 350/2022  
Audiencia Provincial de Albacete, SAP AB 370/2022  
Juzgado de lo Mercantil de Málaga Secc 2, SJM MA 11915/2022  
Audiencia Provincial de Madrid, SAP Madrid Secc 30, ARP 2022/778  
Audiencia Provincial de Badajoz, SAP BA 265/2022  
Audiencia Provincial de Barcelona Secc 15, SAP B 400/2021  
Audiencia Provincial de Oviedo, SAP O 2465/2021  
Audiencia Provincial de Madrid, SAP M 15693/2021  
Audiencia Provincial de Navarra, SAP NA 1041/2021  
Juzgado De lo Mercantil de Barcelona Secc 3, SJM B 5026/2021 -  
Juzgado de lo Mercantil de Bilbao Secc 2, SJM BI 4911/2021  
Juzgado de lo Mercantil de Barcelona Secc 10, SJM B 14636/2021  
Juzgado de lo Mercantil de Barcelona Secc 12, SJM B 10471/2021  
Español, SAP Madrid (Sección28ª), sentencia núm. 257/2021 de 2 julio.  
Tribunal Superior de Justicia de Cataluña, Sala de lo Social Secc 1, 2793/2021  
SAP BARCELONA Secc. 15, SAP B 10117/2021 -  
Audiencia Provincial de Valencia Secc. 9, Roj: SAP V 1729/2021  
Juzgado de lo Mercantil de Madrid Secc 3, SJM M 510/2021  
Audiencia Provincial de Albacete Secc 1, SAP AB 959/2021  
Audiencia Provincial de Madrid Secc 3, SAP M 10649/2021  
Audiencia Provincial de Guipuzkoa Secc 2, SAP SS 1395/2021  
Audiencia Provincial de Barcelona Secc 15, SAP B 2749/2021  
Juzgado de lo Mercantil de Bilbao nº1, SJM BI 12908/2021  
Audiencia Provincial de las Palmas de Gran Canaria, SAP GC 1281/2020  
Audiencia Provincial de Madrid Secc 28, SAP M 12716/2020  
Audiencia Provincial de Madrid Secc 28, SAP M 6544/2020  
Audiencia Provincial de Barcelona Secc 15, SAP B 10731/2019

Audiencia Provincial de Madrid Secc 1, SAP M 13048/2020  
Audiencia Provincial de Pontevedra Secc 1, SAP PO 1244/2020  
Audiencia Provincial de Pontevedra Secc 5, SAP PO 147/2020  
Audiencia Provincial de Madrid Secc 28, SAP M 18037/2019  
Audiencia Provincial de Barcelona Secc 15, SAP B 7900/2019  
Audiencia Provincial de Madrid Secc 28, SAP M 16685/2019  
Audiencia Provincial de Barcelona Secc 15, SAP B 15599/2019  
Bilbao Provincial Court, SAP BI 1397/2019  
Audiencia Provincial de Barcelona Secc, SAP B 1387/2019  
Audiencia Provincial de Madrid Secc 28, SAP M 2366/2019  
Juzgado de lo Mercantil de Vigo Secc 3, SJM PO 3453/2019  
Audiencia Provincial de Huelva Secc 3, SAP H 492/2019  
Audiencia Provincial de Vigo Secc 5, SAP PO 1230/2019  
Leon Provincial Court Secc 1, SAP LE 1268/2019  
Tribunal Supremo, Sala de lo Civil, Madrid Secc 1, SAP M 13399/2019  
Audiencia Provincial de Badajoz, SAP BA 187/2019  
Juzgado de lo Mercantil de Barcelona Secc 10, SJM B 5925/2019

## Sweden

Patent- och marknadsöverdomstolen, PMÖ 7579-18  
Patent- och marknadsöverdomstolen, PMÖ 6806-17  
Arbetsdomstolen, AD 2018 nr 25 (A 90/16)  
Arbetsdomstolen, AD 2020 nr 21 (B 29/20)  
Arbetsdomstolen, AD 2017 nr 12 (B 128/15)  
Arbetsdomstolen, AD 2017 nr 57 (B 128/16)  
Arbetsdomstolen, AD 2018 nr 31 (B 116/16)  
Arbetsdomstolen, AD 2018 nr 49 (B 68/17)  
Arbetsdomstolen, AD 2018 nr 61 (B 88/18)  
Arbetsdomstolen, AD 2018 nr 62 (B 90/18)  
Arbetsdomstolen, AD 2020 nr 11 (B 34/19)  
Arbetsdomstolen, AD 2020 nr 18 (B 73/19)  
Arbetsdomstolen, AD 2021 nr 1 (B 42/20)  
Högsta Domstolen, NJA 2017 s. 457 (Ö 5078-16)  
Patent- och marknadsöverdomstolen, PMÖ 7870-21  
Patent- och marknadsöverdomstolen, PMÖ 9865-20  
Patent- och marknadsöverdomstolen, B 9256-18  
Patent- och marknadsöverdomstolen, PMÖ 10423-22  
Patent- och marknadsöverdomstolen, PMÖ 10396-18  
Patent- och marknadsöverdomstolen, PMÖ 11215-17  
Patent- och marknadsdomstolen, B 7970-17

Patent- och marknadsdomstolen, PMT 6829-17

Högsta Domstolen, NJA 2018 not 16 (Ö889-17)

Patent- och marknadsdomstolen, PMT 8087-20

Varbergs tingsrätt, T 2613-15

Halmstads tingsrätt, T 2433-15

Uppsala tingsrätt, T 7484-17

General Civil Matters Court, T 346-19

## Annex IV: Case Volume Analysis Data



## TRADE SECRETS LITIGATION TRENDS IN THE EU

Member State	No of proceedings	Proportion of proceedings	GDP (2017)	GDP proportion	Expected proceedings (GDP-based)	Deviation ((No - Exp)/Exp) (GDP-based)	Proceedings prop/ GDP prop	Patent applications (2017)	Patent proportion	Expected cases (EPO-based)	Deviation ((No - Exp)/Exp) (EPO-based)	Patent prop/ GDP prop	GDP per cap PPS (2017)	GII score (2022)	GDP growth (2017)
Austria	5	0.007	369 361.90	0.028	20	-0.74	0.26	2 209	0.035	24	-0.79	0.21	127	50.2	2.3
Belgium	59	0.085	445 050.10	0.034	24	1.50	2.50	2 152	0.034	23	1.52	2.52	118	46.9	1.6
Bulgaria	36	0.052	52 531.30	0.004	3	11.91	12.91	32	0.001	0	102.58	103.58	50	39.5	2.8
Croatia	15	0.022	49 985.90	0.004	3	4.65	5.65	10	0.000	0	137.11	138.11	64	35.6	3.4
Cyprus	4	0.006	20 312.40	0.002	1	2.71	3.71	49	0.001	1	6.52	7.52	90	46.2	5.7
Czech Re	3	0.004	194 132.90	0.015	10	-0.71	0.29	206	0.003	2	0.34	1.34	91	42.8	5.2
Denmark	19	0.027	294 808.20	0.023	16	0.21	1.21	2 089	0.033	23	-0.16	0.84	130	55.9	2.8
Estonia	17	0.024	23 833.60	0.002	1	12.44	13.44	54	0.001	1	27.99	28.99	79	50.2	5.8
Finland	10	0.014	226 301.00	0.017	12	-0.17	0.83	1 797	0.028	20	-0.49	0.51	111	56.9	3.2
France	51	0.073	2 297 242.00	0.176	122	-0.58	0.42	10 619	0.166	115	-0.56	0.44	104	55	2.3
Germany	39	0.056	3 267 160.00	0.250	173	-0.78	0.22	25 539	0.400	277	-0.86	0.14	124	57.2	2.7
Greece	3	0.004	176 903.40	0.014	9	-0.68	0.32	102	0.002	1	1.71	2.71	67	34.5	1.1
Hungary	17	0.024	127 024.70	0.010	7	1.52	2.52	95	0.001	1	15.48	16.48	69	39.8	4.3
Ireland	2	0.003	297 763.20	0.023	16	-0.87	0.13	660	0.010	7	-0.72	0.28	183	48.5	9
Italy	151	0.218	1 736 592.80	0.133	92	0.64	1.64	4 360	0.068	47	2.19	3.19	98	46.1	1.7
Latvia	8	0.012	26 984.40	0.002	1	4.59	5.59	14	0.000	0	51.61	52.61	67	36.5	3.3
Lithuania	20	0.029	42 276.30	0.003	2	7.91	8.91	24	0.000	0	75.73	76.73	79	37.3	4.3
Luxembourg	1	0.001	58 168.80	0.004	3	-0.68	0.32	533	0.008	6	-0.83	0.17	269	49.8	1.3
Malta	1	0.001	11 936.60	0.001	1	0.58	1.58	69	0.001	1	0.33	1.33	102	49.1	10.9
Netherlands	36	0.052	738 146.00	0.056	39	-0.08	0.92	7 043	0.110	76	-0.53	0.47	129	58	2.9
Poland	38	0.055	465 772.60	0.036	25	0.54	1.54	446	0.007	5	6.84	7.84	69	37.5	5.1

## TRADE SECRETS LITIGATION TRENDS IN THE EU

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Portugal	9	0.013	195 947.20	0.015	10	-0.13	0.87	150	0.002	2	4.52	5.52	77	42.1	3.5
Romania	45	0.065	186 399.00	0.014	10	3.55	4.55	52	0.001	1	78.68	79.68	63	34.1	8.2
Slovakia	7	0.010	84 669.90	0.006	4	0.56	1.56	41	0.001	0	14.72	15.72	71	34.3	2.9
Slovenia	20	0.029	43 011.30	0.003	2	7.76	8.76	98	0.002	1	17.79	18.79	86	40.6	4.8
Spain	50	0.072	1 162 492.00	0.089	62	-0.19	0.81	1 671	0.026	18	1.75	2.75	93	44.6	3
Sweden	28	0.040	480 025.50	0.037	25	0.10	1.10	3 783	0.059	41	-0.32	0.68	122	61.6	2.6

GDP based on 2017 'GDP at market prices' data from EuroStat Online Database (online data code: TEC00001); Patent activity based on 2017 'Patent applications to the European Patent Office by applicants' / inventors' country of residence' from EPO/EuroStat Online Database (online data code: SDG\_09\_40). 2017 data is used as it is the first year of the relevant period of analysis, and probably represents a more reasonable basis for comparison than the end of the period (2022) due to the distortions caused by the COVID-19 pandemic in most post-2020 statistical data. GII scores from WIPO Global Innovation Index Report 2022.

# TRADE SECRETS LITIGATION TRENDS IN THE EU

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