

# Italian Implementation of Directive (EU) 2016/943 Protection of Undisclosed Know-How and Business Information (Trade Secrets)

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The Trade Secrets Directive 2016/943/EU (the Directive), converted to law in Italy by Legislative Decree No. 63/2018, includes information among entrepreneurial resources.

Directive 2016/943 provides an additional protection to trade secrets over and above the protection offered by patents within the context of the “fourth industrial revolution”, which brought about the creation

of new business models involving the use of financial resources for innovation purposes. The direct consequence of this is that research is encouraged, and companies, regardless of their size, increase their commercial competitiveness.

The objective pursued by the Directive is to create a harmonised protection of trade secrets, ensuring greater protection for the exploitation of knowledge against the unlawful use or disclosure by other subjects, and, therefore,

reinforcing the deterrent effect. First and foremost, this aim is pursued by a search for an unambiguous definition of a trade secret, in which the term “trade” entails that the information is eligible to be used on the market.

Therefore, the information represents a resource which in itself has an independent exchange value. Knowledge that, even if secret, is able to be the subject of transactions or, for example, be used as a contribution to the capital of a company.

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vate and public companies, as well as non-profit organisations.

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In order for information or knowledge to be qualified as a trade secret, three conditions must be complied with: the information is not known, it has an economic value, and it has to be subject to suitable secrecy protection measures.

The protection offered by the regulations on trade secrets, in fact, effectively reinforces the protection applied not only to innovative information or information linked to technical experience, but also to merely commercial information (such as marketing strategies, lists of profiled customers, etc.). In essence, a new exclusive property right is recognised, which frees itself from competition rules and which is destined to find a practical application in the field of artificial intelligence, with the exception of complex systems of deep learning, whose level of complexity is such as to be unable to find any protection, at present, precisely because the information that characterises these neural network systems is unknown.

An important turning point is represented by the recipients of

the regulations: aimed not only at enterprises, but also at non-commercial institutions and natural persons.

Therefore, trade secrets are not only protected in the context of competitive relations between companies. This means that even a natural person in legitimate possession of a trade secret may transfer or assign it in a number of ways. In the same way, a company may defend itself against the culpable use or culpable ignorance in the unlawful use of its trade secrets by natural persons. Only complete good faith excludes unlawful conduct.

The risk involved in this extension to the protections applicable to trade secrets regards the restriction in the way knowledge circulates, as a result of which monopolies on information of unlimited duration could consequently be created.

However, reverse engineering and the use or disclosure of trade secrets when mandatory or where permitted by law continue to be legitimate. To sum up, the protection of trade secrets is limited

by safeguarding public interest.

The protection of trade secrets is not to be used as a pretext for limiting and/or hindering the mobility of employees, but the new regulations will be applied rigorously at the procedural level. Technical consultants, the parties and their representatives, defence counsel, administrative personnel, and witnesses will be prohibited from disclosing trade secrets subject to judicial proceedings at the express order of the Court, also for the period following the conclusion of the judgment. In Italian law, the limitation period to bring legal actions to protect against breaching trade secrets is five years, (and not the six years indicated in the Directive).

The dynamism with which the new technologies are developing increasingly involves the lives of entrepreneurs and their “trade secrets”; the challenge for professional specialists like ourselves, to offer innovative solutions to our customers, has never been so current and compelling.

# Liability of Company Directors in Spain

**By Cristina de Canals**

One of the main reasons for foreign companies deciding to set up a Spanish subsidiary is because it allows for clear separation of the assets of the mother company from those of the subsidiary.

However, most of the directors of Spanish subsidiaries are not aware of what is involved in their

position and the legal consequences of misconduct, which can be very serious for them and for their assets.

## Directors' Liability: Requirements

Directors' liability, with regards to commercial law, means that they are liable for damages caused by

wilful intent or negligence against the law, by-laws, or by breach of management duties. This means that it is not enough to comply with the “just formal” obligations that go with the management role. Directors should behave in a diligent and loyal way and must comply with the legal requirements which affect different business areas: commercial, contract, tax, criminal, employment, environmental, data protection, etc.