

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)

*CHAPTER I*

***Subject matter and scope***

*Article 1*

**Subject matter and scope**

1 This Directive lays down rules on the protection against the unlawful acquisition, use and disclosure of trade secrets.

Member States may, in compliance with the provisions of the TFEU, provide for more far-reaching protection against the unlawful acquisition, use or disclosure of trade secrets than that required by this Directive, provided that compliance with Articles 3, 5, 6, Article 7(1), Article 8, the second subparagraph of Article 9(1), Article 9(3) and (4), Article 10(2), Articles 11, 13 and Article 15(3) is ensured.

2 This Directive shall not affect:

- a the exercise of the right to freedom of expression and information as set out in the Charter, including respect for the freedom and pluralism of the media;
- b the application of Union or national rules requiring trade secret holders to disclose, for reasons of public interest, information, including trade secrets, to the public or to administrative or judicial authorities for the performance of the duties of those authorities;
- c the application of Union or national rules requiring or allowing Union institutions and bodies or national public authorities to disclose information submitted by businesses which those institutions, bodies or authorities hold pursuant to, and in compliance with, the obligations and prerogatives set out in Union or national law;
- d the autonomy of social partners and their right to enter into collective agreements, in accordance with Union law and national laws and practices.

3 Nothing in this Directive shall be understood to offer any ground for restricting the mobility of employees. In particular, in relation to the exercise of such mobility, this Directive shall not offer any ground for:

- a limiting employees' use of information that does not constitute a trade secret as defined in point (1) of Article 2;
- b limiting employees' use of experience and skills honestly acquired in the normal course of their employment;
- c imposing any additional restrictions on employees in their employment contracts other than restrictions imposed in accordance with Union or national law.

## 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, generally known among or readily accessible 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;
- (2) ‘trade secret holder’ means any natural or legal person lawfully controlling a trade secret;
- (3) ‘infringer’ means any natural or legal person who has unlawfully acquired, used or disclosed a trade secret;
- (4) ‘infringing goods’ means goods, the design, characteristics, functioning, production process or marketing of which significantly benefits from trade secrets unlawfully acquired, used or disclosed.