

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 II*

*Acquisition, use and disclosure of trade secrets*

*Article 3*

**Lawful acquisition, use and disclosure of trade secrets**

1 The acquisition of a trade secret shall be considered lawful when the trade secret is obtained by any of the following means:

- a independent discovery or creation;
- b observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret;
- c exercise of the right of workers or workers' representatives to information and consultation in accordance with Union law and national laws and practices;
- d any other practice which, under the circumstances, is in conformity with honest commercial practices.

2 The acquisition, use or disclosure of a trade secret shall be considered lawful to the extent that such acquisition, use or disclosure is required or allowed by Union or national law.

*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;

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- 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.

#### *Article 5*

#### **Exceptions**

Member States shall ensure that an application for the measures, procedures and remedies provided for in this Directive is dismissed where the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:

- (a) for exercising 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) for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest;
- (c) disclosure by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with Union or national law, provided that such disclosure was necessary for that exercise;
- (d) for the purpose of protecting a legitimate interest recognised by Union or national law.