

The Transposition of the Trade Secrets Directive in Greece

Current status in Greece

Greece remains among the countries that have not transposed Directive (EU) 943/2016 on the protection of undisclosed know-how and business information (trade secrets) against the unlawful acquisition, use and disclosure thereof. However, given that the deadline to transpose the Directive lapsed on 9 June 2018, individuals in Greece may rely on the directive against the State in court proceedings and claim the rights granted thereby.

Definition of trade secrets

The most significant change introduced by the Directive is the definition of a trade secret, not previously existed under Greek law, which is now described as information that i) is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question, ii) has commercial value because it is secret and iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of said information, to keep it secret.

Although the first two requirements broaden the definition of trade secret to any (secret) information that has commercial value, including even negative information (such as product defects), the third one narrows it to information that has been subject to reasonable steps to keep it secret.

Reasonable steps to preserve secrecy

The latter is a key requirement since companies will have to actively take and be able to prove measures for the protection of their trade secrets rather than relying merely on the intension to keep the information secret.

In practice, such steps will include both proactive (e.g. use of passwords, restricted access, procedures for marking, segregating and storing trade secrets, database with details of all trade secrets, trade secrets policy, contractual measures, especially with regards to employees and business partners, training of employees etc.) and reactive steps (prosecution in case of misappropriation of trade secrets).

Enforcement of rights on trade secrets

So far, plaintiffs had to rely mainly on the provisions of unfair competition law (L.146/1914) to enforce their rights on their trade secrets. The Directive set out a minimum framework of measures, procedures and remedies for the protection on trade secrets which must be adopted by Member States, ranging from provisional and precautionary measures to injunctions and corrective measures.

Position of employees

The Directive strengthens the position of employees in the sense that they are free to use the experience and skills honestly acquired in the normal course of their employment to their next employer. In addition, the acquisition of a trade secret shall be considered lawful when the trade secret is obtained through exercise of the right of workers or workers' representatives to information and consultation in accordance with EU law and national legislation and practices.

Furthermore, the application for the measures, procedures and remedies provided for in the Directive shall be dismissed where the alleged acquisition, use or disclosure of the trade secret was carried out by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with EU or national law, provided that such disclosure was necessary for that exercise.

Court proceedings

Another area of harmonisation is the prevention of disclosure of trade secrets during court proceedings and the measures that the Courts may take to this end. Such measures include at a minimum:

- i. restricting access to documents containing trade secrets or alleged trade secrets submitted by the parties or third parties to a limited number of persons,
- ii. restricting access to hearings when trade secrets or alleged trade secrets may be disclosed, to a limited number of persons and
- iii. making available to any person a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed or redacted.

Despite the above changes enforcing trade secrets in Court proceedings will remain a delicate and balancing exercise.

Reverse engineering

Furthermore, it is noteworthy, that reverse engineering of trade secrets is permitted under the conditions set out in the Directive. More precisely, the 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, is considered as a lawful acquisition of trade secrets.

Implementation of trade secret policy

Companies should implement a trade secret policy, as part of their Intellectual Property strategy, in order to limit the possibility of misappropriation and effectively protect their IP assets in view of the transposition of the Directive in Greece.

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