



DANISH PATENT AND TRADEMARK OFFICE

Trade Secrets

Implementation of the Trade Secret Directive into Danish National
Law

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Directive 2016/943

- Directive 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

- Overview:
 - Definition of what constitutes a "trade secret" – art. 2.
 - Legal and illegal use – art. 3 & 4.
 - Limitation periods – art. 8
 - Provisions in regards to lawsuits, protective measures, compensation and imposition of sanctions – art. 9-16.



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Purpose

- Harmonization
- Effective Regulation – A Single Market Strategy:
 - Introduce a uniform and better protection of trade secrets in the EU
 - Improve the framework for the development and exploitation of innovation and knowledge sharing in the single market
 - Protection against situations where information on trade secrets is acquired, used or transmitted illegally.
 - The Directive sets the foundation for a “minimum harmonization”, i.e. That national law, within the specified framework, may provide for more widespread protection against the illicit acquisition, disclosure and use of trade secrets than those laid down in the directive.



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Current "Trade Secret" protection in the EU

The fragmentation of the legal protection (selected measures)
Source of data: Baker & McKenzie (2013).

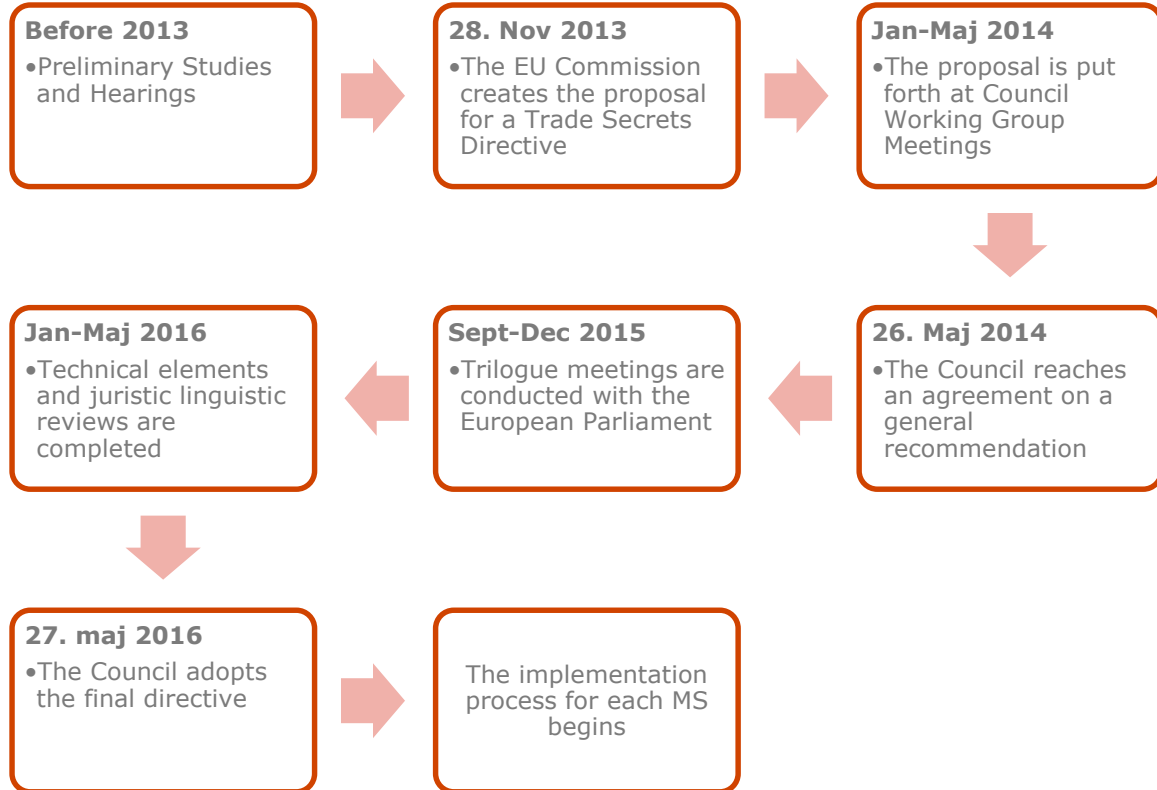
<i>Selected measures</i>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
Definition of trade secret in civil law legislation																												
Availability of injunctions against third party in good faith																												
Injunctions not limited in time																												
Availability of orders on destruction of TS/resulting goods																												
Calculation of damages based on fair royalty fee																												
Performing rules on preservation of secrecy (civil proceedings)																												
Sufficient criminal legislation																												

N.B. A blank cell means that the measure concerned is not provided for in national legislation



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Timetable





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Implementation into Danish National Law

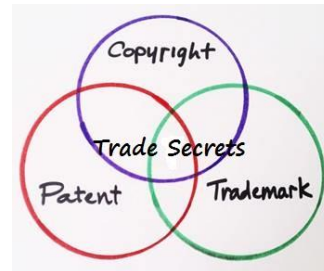
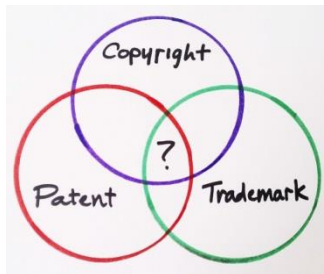
- How?
 - New act – “Lov om forretningshemmeligheder” (“Act on Trade Secrets”)
- Joint cooperation between:
 - The Danish Patent and Trademark Office
 - The Ministry of Justice
 - The Competition and Consumer Authority
 - The Ministry of Employment
- Transposition Workshops with the European Commission and MS
 - Ensure uniformity
 - Able to submit thoughts, issues, aspects, interpretation and perform “internal” MS hearings
 - Inspiration from our neighbouring countries



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IPR and Trade Secret Protection

- Trade Secrets are often part of the initial stages or a part of an IPR.
- Trade Secrets can often be seen (and treated) just as valuable as a "true" IPR
- Trade Secrets are a key part of R&D and innovation.





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Current legislation

- The Directive is broadly in line with the Danish legal position
- Formerly regulated in:
 - The Marketing Practices Act § 23
 - The Penal Code § 263 (3) and 264 (2)
 - The Administration of Justice Act
- Adjustment to the terminology and reference points in both the Penal Code and Administration of Justice Act.
- New act = a broader and more effective scope of protection.



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Key Aspects of the new act on Trade Secrets

- The new act brings along new conceptual uses for trade secret holders such as:
 - A legal definition of trade secret
 - Conditions of application, safeguards and alternative measures
 - Preservation of confidentiality of trade secrets in the course of legal proceedings



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Continued

- A definition of unlawful behavior.
- The possibility of compensation through damages and the use of injunctions and prohibitions
- Sanctions

COMPENSATION





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Current Progress and Timeline

