

Protection of Trade Secrets - Synopsis: Personal Reflections / Conclusions

	Austria	Belgium	Brazil	Bulgaria	France	Hungary	Italy
Statute	UWG	scattered over different provisions	Several provisions: esp. Law No. 9,279 of May 14, 1996¹	No specific statute; Competition Projection Act ²	No specific statute³	No specific statute⁴	Italian Intellectual Property Code (the IPC)
Efficiency of the legal protection in the regarding country	Civil actions often remain without any practical effect, since the courts are not allowed to prohibit anyone to exercise his/her rights	In Belgium it is difficult to obtain a cease-and-desist-order or search-order	n/a	n/a	- French law provides useful tools to protect trade secrets - effectiveness remains limited: no remedy of the harm caused by a disclosure of trade secrets - Furthermore, failing actual use of the trade secret, the damage is often difficult to assess which leads to an absence of an appropriate legal regime	n/a	Report allows to conclude that the protection of trade secrets in Italy is deemed as effective

¹ Regulates rights and duties related to industrial property; Further statutes mentioned: e.g. Brazilian Labor Law, Brazilian Franchise Law, Brazilian Civil Code.

² The CPA prohibits unfair competition, which is defined as any act or omission to act in the course of business activity that is inconsistent with fair business practices and harms or may harm the interests of competitors (Art. 29 CPA). The CPA further defines and prohibits specific forms of unfair competition, among which is the prohibition for disclosure of production or trade secret (Art. 37 CPA).

³ Statutes mentioned: Bill No. 3985 , Bill No. 2139, French Commercial Code, French Labor Code, French Intellectual Property Code inter alia.

⁴ Statutes mentioned: Hungarian Competition Act, Hungarian Civil Code, Hungarian Data Protection Act inter alia.

Protection of Trade Secrets - Synopsis: Personal Reflections / Conclusions

	Austria	Belgium	Brazil	Bulgaria	France	Hungary	Italy
Criticism	<p>- cease-and-desist order are only effective as long as know-how is secret</p>	<p>- no uniform definition and terminology of “trade secrets”, “confidentiality” and “confidential information“</p> <p><i>- trade secrets are not considered to be “Intellectual Property” and are, therefore, not limited in time</i></p>	<p>- in Brazil, one of the difficulties in protecting trade secrets in Court is providing evidence of the trade secret</p> <p>- the law omits whether the claimant in a trade secret infringement lawsuit must submit prima facie evidence whether the information in question is non-obvious to a person</p> <p><i>- Brazilian law does not establish what misuse of trade secret protection is</i></p>	<p>- with a few exceptions, most of the Bulgarian statutes do not contain a clear definition of trade secret; different acts use different legal terms; the differences in the legal terminology lead to uncertainty regarding the scope of application of the statutory act or the respective provisions</p> <p>- different acts provide for different sets of exceptions to the granted protection</p> <p>- no general right of protection of trade secrets that can be opposed to all third parties</p>	<p>- French criminal law can be inefficient due to the discretionary power principle⁵</p> <p>- absence of a clear definition of the term trade secrets</p>	<p>- <i>(not stated as criticism but) report describes</i> that a legal action claiming trade secret infringement, without specifications and without specific details of the protected information, is not admissible (however, administrative and civil procedural rules acknowledge the right of trade secret proprietors to keep certain information undisclosed and inaccessible)</p> <p>- <i>(not stated as criticism but) report describes</i> that Hungarian law does not provide for a system of disclosure, but the limited possibility to obtain documents from the other party urged the legislator to adopt special rules in the case of trade secret lawsuits based on the Competition Act</p>	<p>- the IPC risked breaking the balance between the interest of the entrepreneur to the confidentiality and the patent system, because a protection of the secret potentially unlimited in terms of duration and free from the burden of description to which, instead, the grant of the patent is subject, is scarcely compatible with the ratio of the patent system, i.e. reward the research, stimulating it through the conferment to the inventor of an exclusive temporally limited, provided that this latter reveal the innovation to the public</p>

⁵ Vergleichbar mit dt. Opportunitätsprinzip.

Protection of Trade Secrets - Synopsis: Personal Reflections / Conclusions

	Austria	Belgium	Brazil	Bulgaria	France	Hungary	Italy
Suggestions in Conclusion	<ul style="list-style-type: none"> - introduction of a punitive term to extend the cease-and-desist-order⁶ beyond issuance of the judgement (could be staggered in accordance with the type of the secret or the typical development-time of the abused secret) - alternative: flat rate damage compensation 	<ul style="list-style-type: none"> - adoption of a harmonized and uniform definition and terminology - limiting the cease-and-desist-order to the time necessary to the amortization (or the obsolescence) of the considered trade secret (supposing that it can be defined) - provide rules / guidelines concerning the balance to be made between the rights of the trade secret owner and the rights of the defendant 	<ul style="list-style-type: none"> - n/a - only contains suggestions for trade secret holders: adopt additional cautions (e.g. specific NDAs, restricting access to highly valuable trade secrets only to the most qualified employees, application of technical barriers) 	<ul style="list-style-type: none"> - report welcomes the EU-wide initiative for adoption of a directive on trade secret protection to harmonize the legislation of the member states 	n/a	<ul style="list-style-type: none"> - does not contain a conclusion 	<ul style="list-style-type: none"> - no statement on regulation on an international level - contains suggestions for trade secret holders

⁶ Cease-and-desis-order meint Unterlassungsaufforderung, z.B. im österreichischen Recht (vergleichbar mit Abmahnung nach deutschem § 12 UWG).

Protection of Trade Secrets - Synopsis: Personal Reflections / Conclusions

	Luxembourg	Netherlands	Spain	Switzerland	UK	Ukraine	USA
Statute	No specific statute ⁷	limited provisions on the protection of trade secrets ⁸	No specific statute, Unfair Competition Act and Criminal Code (inter alia)	No specific statute, unfair competition law, labour law, criminal law (inter alia)	Trade secrets are treated as a subset of the broader category of rights in confidential information ⁹	No specific statute ¹⁰	State and Federal Law; Uniform Trade Secrets Act (UTSA)
Efficiency of the legal Protection in the regarding country	- law lacks of sufficient tools for right holders to enable them to enforce their rights in court	- regime is insufficiently clear to offer robust protection for businesses - However, in case of legal proceedings involving technical trade secrets, the hearing judge might not be a specialized judge - applicable protection is not limited in time & publication is not required	- adequate but can be improved - Spanish legislation related to the protection of trade secrets as well as know-how provides enough legal coverage to the proprietors of trade secrets	- the current situation regarding the terminology of know-how is not satisfactory (distinction should be made between trade secrets and know-how)	- English Law has achieved a balance between effectively protecting trade secrets and not unreasonably inhibiting competition in the market place - the law provides effective protection for know-how and trade secrets in this jurisdiction as things stand	- no conclusion regarding the efficiency of law	- Proponents believe that criminal prosecutions under the Economic Espionage Act, while important, are insufficient, both because the federal government does not have enough resources to pursue every case and also because this statute is not designed to make victims of trade secret theft whole

⁷ Statutes mentioned: Criminal Code, Civil Code inter alia.

⁸ Statutes mentioned: Dutch Penal Code, Employment Law inter alia.

⁹ Report focussed on English common law; Important Cases: Prince Albert v Strange (1849) 41 ER 1171; Saltman Engineering Co. Ltd v Campbell Engineering Co. Ltd (1948) 65 RPC 203.

¹⁰ Statutes mentioned: Civil Code of Ukraine, Law of the Ukraine on Protection Against Unfair Competition, Criminal Code inter alia.

Protection of Trade Secrets - Synopsis: Personal Reflections / Conclusions

	Luxembourg	Netherlands	Spain	Switzerland	UK	Ukraine	USA
Criticism	<p>- the most significant lack in Luxembourg law concerns the measures to prove an infringement (descriptive seizure) and the grant of damages in case of a trade secret infringement</p>	<p>- Dutch tort law does not include a definition of the term "trade secrets"</p> <p>- The drawback for businesses in these instances is that the rewarded damages tend to be lower than it would be the case if they could have invoked intellectual property rights; the possibilities to recover damages in case of breach of confidentiality or non-disclosure agreements are therefore criticized</p>	<p>- insufficiencies in effectiveness of the enforcement</p> <p>- no tailor-made concept in Spain regarding what constitutes or what is a "trade secret"</p>	<p>- lack of a uniform terminology</p> <p>- provisions do not indicate if an employee can or cannot exploit the secret after the termination of the contract</p>	<p>- certain aspects of the law in this area remain unclear (such as the position regarding the status of confidential information that has been obtained)</p>	<p>- no strict scope of information that should be considered as trade secrets</p> <p>- Further criticism n/a</p>	<p>- there are disputes whether some state laws on the protection of trade secrets violate the US constitution</p>

Protection of Trade Secrets - Synopsis: Personal Reflections / Conclusions

	Luxembourg	Netherlands	Spain	Switzerland	UK	Ukraine	USA
Suggestions in Conclusion	<ul style="list-style-type: none"> - introduce statutes for the protection of trade secrets similar to the laws on the protection of intellectual property - design measures with great care and to include specific provisions to protect confidential information of the respective parties and the defendant in particular - welcome the EU-wide initiative and harmonized regulations 	<ul style="list-style-type: none"> - n/a - contains suggestions for trade secret holders 	<ul style="list-style-type: none"> - a uniform concept of trade secrets and distinguishing it from the others as know-how or even industrial secret related to the patents - we solely consider that a new reform of the European Union should change some of the weaknesses of Spanish legislation in the protection - maybe even establish a Special Law on the protection of trade secrets 	<ul style="list-style-type: none"> - it is likely that a unique legislation regarding trade secrets protection would not be the best approach - the reworking of the current provisions, esp. in labor and criminal law, with more precision concerning the scope of protection of trade secrets would be advisable - the term of “trade secret” should be mentioned in all provisions regarding the protection of trade secrets because the word “trade” encompasses all types of secrets playing a crucial economic rule for its owner - include exceptions concerning the lawful acquisition, use and disclosure of trade secrets - greater harmonization of the protection of valuable trade secrets across EU is welcomed, as long as the proposed directive can achieve the right balance between the fair protection of the legitimate interests of rights holders and commercial competition 	<ul style="list-style-type: none"> - no urgent need for significant reforms in this area of law 	<ul style="list-style-type: none"> - contains suggestions for trade secret holders - <i>(the chapter regarding misuse contains:)</i> the matter of trade secret protection is complicated enough in Ukraine; as a consequence, there are some proposal to amend Ukrainian legislation inserting provisions on more effective trade secret protection, more complex remedies and more liability 	<ul style="list-style-type: none"> - the U.S. Group strongly supports the idea of national legislation that is at the very least similar to a federal UTSA as long as state law is not preempted thereby

Protection of Trade Secrets - Synopsis: Personal Reflections / Conclusions