

# The Protection of Trade Secrets in Greece

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Greece | September 25 2025

Trade secrets are one of the most important assets (in some cases- e.g. in tech companies- the most important) of an undertaking. In Greece, the legislator has acknowledged over the years the importance of the protection of trade secrets. As a result, the holder of the trade secrets is protected by various, separate legal provisions, such as L. 1733/1987 (*Technology transfer, inventions, technological innovation and establishment of an Atomic Energy Commission*) as it was amended by L. 4605/2019 which transported in Greece the EU Directive No. 2016/943 (*on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure*) and L. 146/1914 (*Unfair Competition*).

## I. What is a “Trade Secret” in accordance with the Greek Law?

The definition of the Trade Secret is provided in article 22A par. 4 of L. 1733/1987 (repeating the definition of the Directive 2016/943), according to which “Trade Secrets” are information which: **i)** 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; **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 the information, to keep it secret.

For the better understanding of the above definition, par. 14 of the preamble of the Directive 2016/943 is very useful, according to which: *“It is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed so as to cover **know-how, business information and technological information** where there is both a legitimate interest in keeping them confidential and a legitimate expectation that such confidentiality will be preserved. Furthermore, such know-how or information should have a commercial value, whether actual or potential. Such know-how or information should be considered to have a commercial value, for example, where its unlawful acquisition, use or disclosure is likely to harm the interests of the person lawfully controlling it, in that it undermines that person's scientific and technical potential, business or financial interests, strategic positions or ability to compete. The definition of trade secret excludes trivial information and the experience and skills gained by employees in the normal course of their employment, and also excludes information which is generally known among, or is readily accessible to, persons within the circles that normally deal with the kind of information in question”.*

Indicatively, according to the Greek case-law and legal literature, the following may constitute trade secrets: technological know-how, technological information, chemical formulas, customer lists and specific information about each customer, lists of supply sources/suppliers, cost lists, price calculations, marketing methods, non-published financial data, business correspondence, rebates, company decisions about future investments etc.

## II. What is the protection of the holder of a “Trade Secret” against its unlawful acquisition, use and disclosure under the Greek Law?

The protection of the holder of a trade secret may be achieved in two separate stages. On one hand there is the protection in advance in order to prevent the unlawful acquisition of the trade secret and on the other hand the protection after an unlawful acquisition has taken place.

## **1. The prevention of the unlawful acquisition**

### **a. Non-Disclosure Agreements and other measures**

First of all, the prevention of the unlawful acquisition of trade secrets can be dealt with by the holder of the trade secrets by the use of Non-Disclosure Agreements (NDAs)/ confidentiality clauses to his personnel, his collaborators and anyone to whom he discloses the trade secrets, establishing contractual liability for damages and/or providing penal clause/punitive damages in case of a breach and including clauses that the obligations from the NDAs survive in any case of termination of the cooperation etc.

In addition, the holder may also take other measures in order to safeguard his trade secrets, such as internal business regulations and various technical measures (eg restricted access, use of cryptography, use of passwords etc).

Obviously the existence of NDAs/confidentiality clauses and some measures which restrict the wider access to the trade secret constitute a prerequisite for the characterization of an information as a trade secret in the first place, taking into account the abovementioned definition.

### **b. Protection of trade secrets that may be disclosed in the course of a trial before a court**

In the framework of litigation documents containing trade secrets may be submitted to the court. **Art. 22Α of L. 1733/1987** (art. 9 of the Directive 2016/943) provides several measures in order to ensure the confidentiality of trade secrets in the course of such judicial proceedings.

More specifically, it provides that the parties of the litigation, their lawyers or other representatives, court officials, witnesses, experts and any other person participating in legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret or any person who has access to documents which form part of those legal proceedings, are not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.

The abovementioned obligation shall remain in force after the legal proceedings have ended. However, such obligation shall cease to exist in any of the following circumstances: a) where the alleged trade secret is found, by a final decision, not to meet the requirements to be characterized as a “trade secret” according to the definition of the law or b) where over time, the information in question becomes generally known among or readily accessible to persons within the circles that normally deal with that kind of information.

Following an application of a party, the court may take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret. These measures may be: a) of restricting access to any document containing trade secrets or alleged trade secrets submitted by the parties or third parties, in whole or in part, to a limited number of persons; b) of restricting access to hearings, when trade secrets or alleged trade secrets may be disclosed, as well as to the corresponding record or transcript of those hearings to a limited number of persons; c) making available to any person other than those comprised in the limited number of persons referred to in points (a) and (b) a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed or redacted.

The number of persons referred to in points (a) and (b) of the second subparagraph shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and its lawyer or other representatives of those parties to the legal proceedings.

When deciding on the measures referred to in paragraph 2 and assessing their proportionality, the Court shall take into account the need to ensure the right to an effective remedy or appeal and to a fair trial, the legitimate interests of the parties and, where appropriate, of third parties, and any potential harm for either of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.

It is noted that, any processing of personal data regarding the abovementioned measures shall be carried out in accordance with the Regulation 2016/679 (GDPR).

As the above provisions are fairly new in the Greek legislature (they entered into force in 2019) there is no (published in the legal press) Greek case-law on how they are applied in practice.

### **c. Protection of trade secrets in case of an application by an opponent to disclose documents**

In Administrative procedures, **article 5 par. 1 of the Code of Administrative Procedure** (L 2690/1999) provides that any person with a legitimate interest may apply to the Public/Administration Authorities to obtain access or receive copies of public documents (which include also private documents which have been submitted to the public authority). Par. 2 of the abovementioned article provides that the provision of such a copy may be denied by the public authority, inter alia, if the documents contain trade secrets.

Following a denial by the Administration to provide access to a file, the person who has a legitimate interest may ask from the competent Public Attorney the issuance of an Order to the Administration to provide such an access/ copies of the file. However, given that the Order of the Public Attorney is issued ex-parte, the holder of the trade secrets may apply to the Public Attorney in order to partially revoke his/her order, excluding the documents that contain trade secrets (but this is at the Public Attorney's discretion).

Furthermore, in the framework of civil litigation, a party of the litigation may, in accordance with **art. 450 of the Greek Code of Civil Procedure**, ask from the court to order its opponent or any third person, who has a document which is important as evidence for the case, to provide a copy to the applicant. However, such a disclosure may be restricted for "a serious reason". Trade secrets, subject to the merits of each case, may be considered by the court as constituting such a "serious reason" which would justify the denial by the court to provide/permit access to such a document.

## **2. The protection after an unlawful acquisition**

The Trade Secrets are protected with the same legal actions such as the Intellectual Property Rights (the purpose of competition is not essential) i.e. the holder of the trade secret has the claims for cease and desist and damages as well as provisional protection/injunctions (see Court of Appeal of East Crete No. 17/2024).

### **a. Cease and Desist and other corrective measures**

More specifically, the owner of the trade secrets may ask in accordance with **art. 22ζ of L. 1733/1987**

- the cessation of or, as the case may be, the prohibition of the use or of the disclosure of the trade secret;
- the prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes;
- the adoption of the appropriate corrective measures with regard to the infringing goods (indicatively, the court may order the recall of the infringing goods from the market; depriving the infringing goods of their infringing quality; destruction of the infringing goods or, where appropriate, their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question).

-the destruction of all or part of any document, object, material, substance or electronic file containing or embodying the trade secret or, where appropriate, the delivery to the applicant of all or part of those documents, objects, materials, substances or electronic files.

Furthermore, the holder of the trade secrets may also be protected provisionally by injunctions as well as in case of utmost urgency with the provision of a Provisional Order (a fast-track procedure where the injunctions are ordered by the judge until the hearing of an application for an ordinary injunction by the court) (see art. 22E-22ΣΤ of L. 1733/1987).

## **b. Damages**

### **i. Damages for the actual loss**

Apart from the above, if the infringer knew or ought to have known that he was engaging in unlawful acquisition, use or disclosure of a trade secret, the trade secret holder may claim damages proportional with the actual loss that he suffered.

For the calculation of the damages, the court may take into account the loss of profits of the trade secret holder and the unjustified profits of the infringer. In addition, the court may also award moral damages to the trade secret holder.

The legal basis for such a claim may be **art. 22Θ of L. 1733/1987**, as well as **art. 914 of the Greek Civil Code** (tort) for the actual damages (*“Anyone who causes loss to another person illegally and culpably has an obligation to compensate him”*) and **art. 932 sentence a’ of the Greek Civil Code** for the moral damages (*“In the event of a tort, regardless of the damages for the property damage, the court may award a reasonable financial compensation for moral damages...”*)

### **ii. Alternative calculation of lump sum damages**

Alternatively, the court may determine lump sum damages based on the amount of royalties or other fees that would have been due, if the infringer had requested a license to use the trade secret (see art. 22Θ par. 2 of L. 1733/1987).

The reason of this alternative calculation of damages is that regarding the trade secrets, it would be difficult to calculate the amount of the actual losses suffered by the holder.

The holder of the trade secret may claim either of the two “kinds” of damages ( i and ii above) but not both of them.

### **iii. Damages on the basis of Unfair Competition**

**L. 146/1914 on Unfair Competition** provides both penal and civil provisions for the protection of trade secrets.

According to **art. 16 of L. 146/1914**:

*“1. Anyone who, as an **employee, worker or apprentice** of a commercial or industrial establishment or enterprise, without right, communicates to third parties, **during the period of his service**, secrets of the establishment or enterprise entrusted to him by virtue of his service, or otherwise coming to his attention, for the **purpose of competition or with the intention of harming the owner** of the establishment or enterprise, shall be punished with imprisonment for a term of up to six months and a fine (up to three thousand drachmas) or with one of these penalties.*

2. The same penalty shall also apply **to anyone who uses or communicates to third parties without a right, for the purpose of competition, such secrets**, of which he has become aware through any of the communications in the previous sentence or through his own act contrary to the laws or good morals”.

Furthermore, according to **art. 18 of L. 146/1914**:

“Violations of the provisions of articles 16 and 17 also give rise to **an obligation to compensate for the damage caused**. The penalties in article 16, **reduced by half**, shall also be imposed to **whoever attempts, for the purpose of competition, to lead another person to perform an act subject to the provisions of article 16, paragraph 1, and article 17**”.

Nevertheless, even if an act of revealing trade secrets or leading another person to reveal them etc may not fall within the meaning of the abovementioned provisions, a civil liability for damages for unfair competition may also be established on the basis of the general provision of **art. 1 of L. 146/1914** (“*In commercial, industrial or agricultural transactions, any act committed for the purpose of competition, contrary to good morals, is prohibited. The offender may be held liable for negligence and for damages for the resulting loss*”).

The protection with the provisions of L. 146/1914 is parallel with the protection provided in law 1733/1987 (see E. Paliou, The New Legislative Framework for the Protection of Trade Secrets (Law 4605/2019) - Every Intellectual Property Right Begins with a Secret, ΔΕΕ 2019, 809, 817)

#### **iv. Other grounds for damages**

Other grounds for a claim for damages due to unlawful disclosure, use etc of a trade secret may also be legal provisions related with the position of the perpetrator, in relation to the company/holder of the trade secret. E.g. in Societe Anonyme, the members of the Board of Directors have the “duty of faith” towards the company, according to which, inter alia, they are obliged “*To maintain strict confidentiality regarding corporate affairs and the company's secrets, which became known to them due to their capacity as directors*” (see art. 97 par. 1 subpar c of L. 4548/2018) and in case of a breach of this duty they may be held liable for damages against the company. The same also applies in other company types as well (e.g. for the director(s) of the Private Company see art. 65 par. 1 L. 4072/2012) or such an obligation may be imposed by the general provision of art. 288 of the Greek Civil Code about the Good Faith/Morals (the latter imposes also the confidentiality obligation to the employees as well).

#### **c. Penal liability**

Apart from the protection of the holder of the trade secret with the legal provisions of the civil law, penal/criminal liability of the infringer may also occur.

First of all, according to **art. 370Γ of the Greek Penal Code**, whoever unlawfully copies, prints, uses, discloses to a third party or in any way infringes data or computer programs, which constitute, inter alia, trade secrets (regardless whether the holder of the secrets is an undertaking of the public or private sector), shall be punished by imprisonment for at least three months. Furthermore, if the perpetrator is in the service/employment of the owner of the data, as well as if the secret is of particularly great economic importance, imprisonment for at least one year shall be imposed.

According to the Supreme Court: “*Copying is the incorporation of the element or program into a material carrier, even if it is done without technical means (Supreme Court 121/2003), and recording is the reproduction of a tangible permanent (copy) of the program or data from a pre-existing original which constitutes a type of*

*copying, use is the use of these programs according to their intended purpose and disclosure to a third party is the total or partial disclosure of the software or its elements in a way that allows their exploitation (Supreme Court 1294/2007)” (see Supreme Court No 414/2024).*

It must be noted that the definition of the “Secrets” in the abovementioned provision is broader than the definition of the trade secrets of the law 1733/1987 (according to the penal provision: “*Secrets are also considered to be those which their legal owner, out of justified interest, treats as secrets, in particular when he has taken measures to prevent third parties from gaining knowledge of them*”), however, it has been reasonably argued that the interpretation of the penal provision must be narrower (see indicatively A. Papadopoulou, *The Trade Secret*, 2007, p. 243 with further citations”).

Apart from the above penal provision, specific crimes regarding the trade secrets are also provided in **art. 16 of L. 146/1914** for cases of unfair competition (see above).

### III. Conclusion

To sum up, the Greek law provides extended protection in favor of the holders of the trade secrets with various provisions in different fields of law, as the Greek (and the EU) legislator understands the importance of the trade secrets in the economic life of an undertaking and as a result, the holder of the trade secrets has at his disposal various methods and legal actions to protect his secrets as well as to claim damages in case of their unlawful disclosure or use.

As a final remark, the present constitutes only a brief, general outline of the protection of trade secrets in Greece and it does not constitute a legal advice. Obviously, it may not cover all the detailed provisions of the law and the various legal issues and interpretations. For any specific situation, the interested party must seek specific legal advice from a qualified lawyer.

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