



dirkzwager
legal & tax

**Legal protection of
trade secrets, know
how and confidential
information**

Trade secrets, know how and confidential information

- Protecting trade secrets, know how and confidentiality is key for businesses in maintaining a competitive edge, especially in our innovation-driven economy.
- The EU Trade Secrets Directive² harmonizes the protection of trade secrets across Europe, establishing **a clear legal framework**. The Directive also provides legal **remedies** for companies, as trade secret holders, in enforcing their rights.
- The following information can be qualified as a trade secret: ¹
 - **Commercial information**, such as distribution methods, advertising strategies, marketing data, customer lists;
 - **Financial information**, such as pricing models, accounting data and other financial data;
 - **Technical information**, such as information on manufacturing processes and knowhow, prototypes, unreleased product designs and other technical innovations.
- Being valuable assets, trade secrets, know how and confidential information are often protected and regulated under **contract law** as well.

1. [2023 Trade Secrets Study FullR_en.docx \(europa.eu\)](#)

2. [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](#)

The EU Trade Secrets Directive (Directive (EU) 2016/943)

- Under the Directive, information is deemed an enforceable trade secret (art. 2):
 - if it is secret;
 - has commercial value; and
 - reasonable steps have been taken to keep it secret.
- The Directive provides protection against **unlawful acquisition, use, and disclosure**, for instance through theft, **breach of confidentiality**, and other means (art. 4).
- The Directive also aims at companies to implement **internal policies** to prevent unauthorized access and unlawful use of trade secrets, through various measures, technical, organizational and contractual.
- Furthermore, the Directive provides various remedies including injunctions, the **right to information, destruction of infringing goods, damages claims and providing a legal cost regime** (section 2 and further of the Directive).
- Implementation of the Directive also ensures the confidentiality of trade secrets **during legal proceedings** to prevent further disclosures.

Implementation of the Trade Secrets Directive

- The Directive is implemented in the Netherlands as the Dutch Trade Secrets Act (*Wet bescherming bedrijfsgeheimen*) and in force since 2018.
- The (implementation of the) Trade Secrets Directive provides security in companies being able to take legal measures against the so-called 'infringer', described as any natural or legal **person who has unlawfully acquired, used or disclosed a trade secret**.
- Statutory provisions are also introduced in the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*), specifically regarding:
 - **secrecy measures** during legal proceedings;
 - **confidentiality clubs**; and
 - **legal cost regimes**.
- The Directive aims for EU-wide harmonization. Although national implementation of the Directive may differ, in the Netherlands cross-border enforcement is possible, thereby granting rights holders **legal measures** for their protection against **unlawful acquisition, use, and/or disclosure of trade secrets, know how and confidential information**.

Key considerations for companies (1)

- Under statutory law, as well as a result of case-law, companies must **act vigilantly** when it comes to trade secret protection. **What can you do?**
- Implement **internal policies to prevent unauthorized access and use** of trade secrets, and regularly review these policies. Answering the following questions will help:
 - **What** information do we consider as confidential, and why?
 - **Where** is that information stored, both physically and digitally?
 - **Who** has access, and what protective measures are in place?
 - Are your IT systems secure and properly set up?
 - Who has access, internally and externally, and who should have it ('need to know')?
 - Are there (post)contractual agreements with and instructions to staff?
 - Are (post)contractual agreements with third parties in place?
 - **How** can protective measures be arranged? Are these already in place and adequate, or is (more/further) action required?

Key considerations for companies (2)

- Trade secrets, know how and other confidential information are regarded as the **lifeblood of companies**. According to studies however, the significance of such valuable information is ever increasing, however, the protection of trade secrets is lagging.³
- Businesses that fail to protect trade secrets risk significant financial losses and damages due to loss of their **competitive advantage**.
- Even if information is not considered a trade secret, disclosure may nevertheless be a breach of confidentiality. Proper **Non-Disclosure Agreements** (NDA's, including restricted use clause and a penalty clause!) in business contracts are just as important as confidentiality clauses in employment contracts.
- Trade secrets, know how and confidential information are entwined with **intellectual property (IP)**. For both trade secrets and IP protection, legal remedies are available for companies, including seizing evidence, injunctions, orders for the destruction or return of infringing goods, damages, and legal costs measures.

3. [Study on the legal protection of trade secrets in the context of the data economy - Publications Office of the EU \(europa.eu\)](#)

Notable case-law

- Dutch courts have been actively applying the Trade Secrets Act in legal proceedings. Notable Supreme Court case-law concerns the following:
 - **Molenbeek Invest v. X**:⁴ legal measures for securing evidence in IP right proceedings – such as seizures – may also be pursued in the case of infringement on trade secrets (as stipulated in the Trade Secrets Act);
 - **Dow v. Organik**:⁵ after seizure, an order for a selection of information by an impartial expert (maintaining confidentiality towards both parties) may be requested;
 - **Semtex v. X**:⁶ exhibition orders for granting access to seized documents may be granted when infringement of trade secrets is sufficiently plausible;
 - **Hennessey v. X**:⁷ court orders may stipulate that disclosure of trade secrets during proceedings is restricted to an authorized representative (e.g. a lawyer or person who received special permission from the court to do so);
 - **SolidNature v. X**:⁸ (under general tort law) a selection of search words in seized to sequester evidence is in principle allowed.
- As case-law develops, the need for businesses to demonstrate they take adequate steps to safeguard their trade secrets remains important.

4. Dutch Supreme Court, [ECLI:NL:HR:2013:BZ9958](#)

5. Dutch Supreme Court, [ECLI:NL:HR:2018:1775](#)

6. Dutch supreme Court, [ECLI:NL:HR:2020:1251](#)

7. Dutch Supreme Court, [ECLI:NL:HR:2021:641](#)

8. Dutch Supreme Court, [ECLI:NL:HR:2023:830](#)



Dirkzwager | Your guide to protection of trade secrets, know how and confidentiality

We specialize in protecting your most valuable information as a trade secret. Our services include:

Risk Assessment

- We conduct risk assessments to help you identify red flags in existing **confidentiality policies** and agreements, and employment contracts. We also deliver hands on advice to remedy shortcomings.

Training and Education

- Equip your team with best practices to safeguard trade secrets. We provide training on best practices for protecting trade secrets and implementing effective confidentiality policies and **secrecy agreements**, such as **NDA's**.

Litigation and Dispute Resolution

- We represent your company in disputes related to **trade secret violations**, including seeking remedies and defending against claims.
- Our team has **extensive experience** with trade secret cases, and procedural measures to protect or obtain evidence.

Dirkzwager | Our track record

Advisory on Confidential Information

- **Identifying** trade secrets, defining confidential information and know how
- **Implementing IT security** i.a. internal policies ('need-to-know' access), team education and staff training on policies and requirements, including regular review of [best practices](#) (e.g. audits of protective measures) and IP
- **Contract drafting and review:** drafting, reviewing and updating existing and template NDA and **employee contracts** (e.g., adding prohibitions and restrictive use clause and post-contractual effect)

Trade Secrets Litigation

- Initiating **legal proceedings** on [trade secrets protection and reverse engineering](#)
- Claims for **trade secret protection** and [defending against counter-claims](#)
- [Enforcement of secrecy clause](#) against **direct competitor**
- Extensive [experience](#) in **ex parte seizures** of evidence regarding know how and confidential information (proceedings against former employees and other parties involved)
- Claims for inspection, copy or extract of information in [summary proceedings](#) and disclosure proceedings

Your key contacts



Joost Becker

Partner

IP & Innovation

becker@dirkzwager.nl

+ 31 (0)6 220 461 57



Jeroen Lubbers

Senior associate

IP & Innovation

lubbers@dirkzwager.nl

+ 31 (0)26 353 83 77



Christel Jeunink

Associate Partner

IP & Innovation

jeunink@dirkzwager.nl

+ 31 (0)26 353 83 67

Legal500



Dieuwertje Bouchier

Associate

IP & Innovation

bouchier@dirkzwager.nl

+ 31 (0)26 353 83 77

The facts speak for Dirkzwager



Multidisciplinary

Lawyers, notaries and tax specialists deliver integrated, high-quality and practical solutions



Award winning

Ranked again by Chambers Europe and Legal 500 in 2024 and in the World Trademark Review for 3 consecutive years.



300+ employees

More than 300 employees working together committedly.



Social contribution

Themes such as energy transition, future-proof care and housing construction are key strategic focal points.



Sustainable office building

Our relocation project includes the most sustainable office building in the Netherlands.



Supporting culture

Supporting cultural organizations such as Phion, Introdans and Toneelgroep Oostpool



dirkzwager
legal & tax

Close to your business

With lawyers, notaries and tax specialists under one roof

 +31 88 242 41 00

 info@dirkzwager.nl

 dirkzwager.nl

 Postbus 111, 6800 AC Arnhem, Netherlands
Velperweg 1, 6824 BZ Arnhem, Netherlands