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PROTECTION OF TRADE SECRETS AND KNOW-HOW IN THE EUROPEAN UNION

WIPO Regional Seminar on Trade Secrets for Central European and Baltic States

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Background of Directive (EU) 2016/943

„Know-how and information are the currency of the knowledge economy providing a competitive advantage”

- ❑ 8 June 2016 following a proposal from the European Commission, the European Parliament and the Council adopted a Directive of the preceding that aims to standardise the national laws in EU countries against the unlawful acquisition, disclosure and use of trade secrets. Directive (EU) 2016/943 (UE Nr L 157/1)**
- ❑ The directive harmonises the definition of trade secrets in accordance with existing internationally binding standards.**
- ❑ It also defines the relevant forms of misappropriation and clarifies that reverse engineering and parallel innovation must be guaranteed, given that trade secrets are not a form of exclusive intellectual property right.**



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- ❑ The trade secrets directive establishes a clear set of rules to facilitate access to comparable civil action across the EU in the case of trade secret misappropriation.**
- ❑ The aim of the Directive is to set out a minimum standard to protect trade secrets, which is harmonised across the EU.**
- ❑ The rules are applicable when the appropriation, use or disclosure of trade secrets is done without the consent of the trade secret holder and through the use of dishonest means, breach of law or breach of contract, for example, by hacking, theft of documents or bribery.**
- ❑ Trade secrets are only legally protected in instances where someone has obtained the confidential information by illegitimate means.**



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- ❑ **Without establishing criminal sanctions, the proposal harmonises the civil means through which victims of trade secret misappropriation can seek protection, such as:**
- ❑ **stopping the unlawful use and further disclosure of misappropriated trade secrets**
- ❑ **the removal from the market of goods that have been manufactured on the basis of a trade secret that has been illegally acquired**
- ❑ **the right to compensation for the damages caused by the unlawful use or disclosure of the misappropriated trade secret.**



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- **Overview of Directive (EU) 2016/943**

- **Article 1 defines subject, matter and scope.**
- **Article 2 provides definitions of certain terms, in particular what has to be understood by a “trade secret”.**
- **Article 3 deals with lawful acquisition, use and disclosure of trade secrets.**
- **Article 4 determines the scope of unlawful acquisition, use and disclosure of trade secrets. Specifications for committing unlawful acts as defined in Article 4 are listed in Article 5.**
- **Article 6 and the subsequent articles deal with measures, procedures and remedies as well as procedural aspects including provisional and precautionary measures.**
- **Articles 11-15 deal with the basic principles for injunction, removal and damage compensation claims.**



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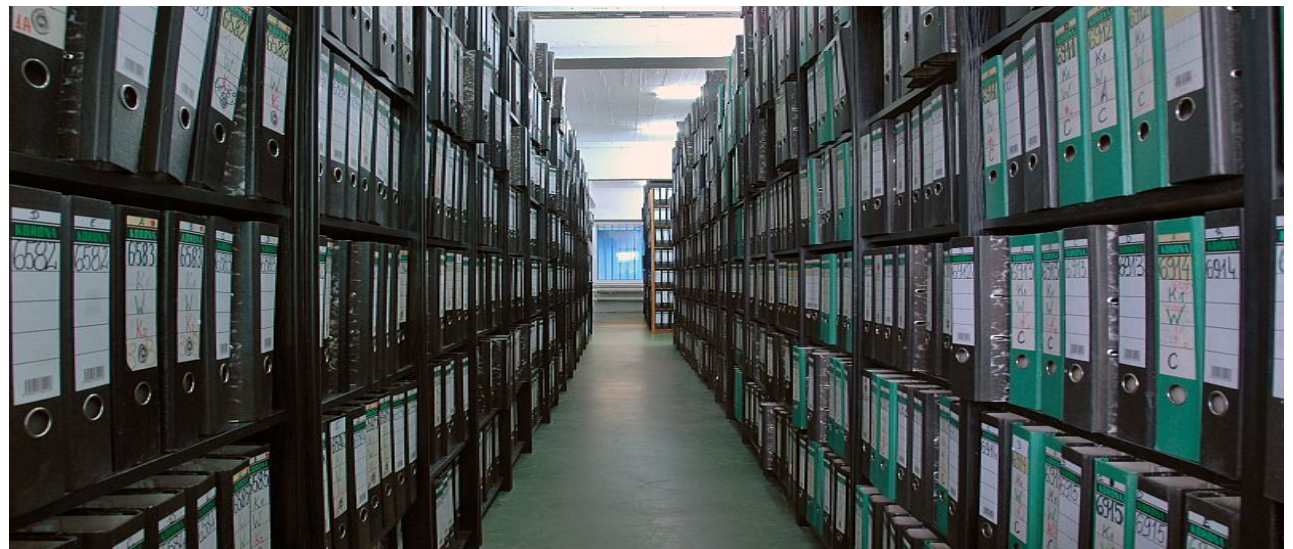
- **Subject matter and scope**

- **The Directive lays down rules on the protection against the unlawful acquisition, use and disclosure of trade secrets.**
- **It does not protect the secret as such, but provides access protection.**
- **Article 2 No (1) provides a definition of trade secrets closely related to the definition in Article 39 para. 2 of TRIPS.**



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- ❑ **TRADE SECRET** means information which meets all of the following requirements:
- ❖ *it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components,*



❑ TRADE SECRETS

- ❖ *it is secret in the sense that it is (...) generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;*





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❑ **TRADE SECRETS – COMMERCIAL VALUE**

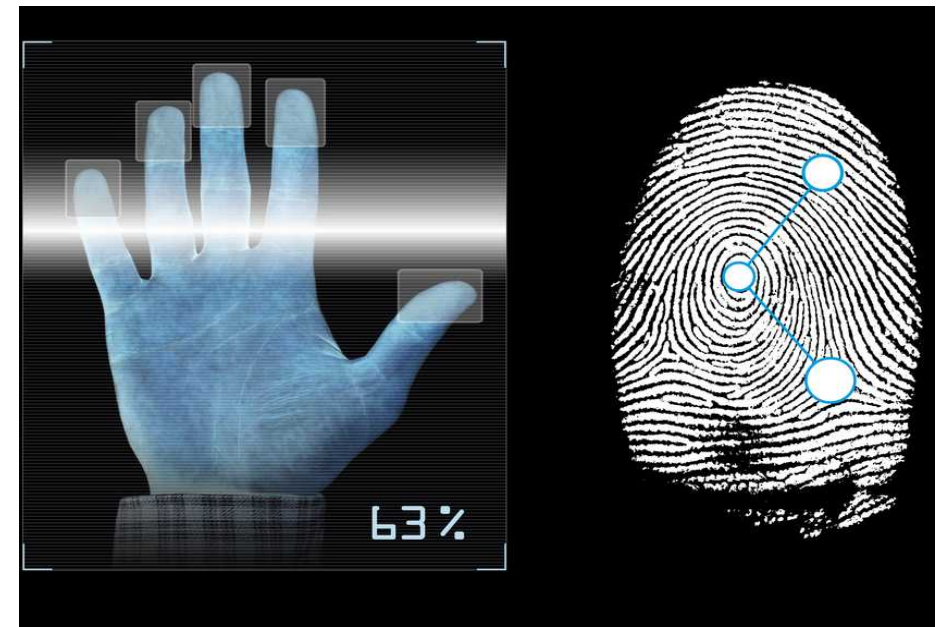
- *„it has commercial value because it is secret”*
- **A causal connection between the secret nature and the commercial value is required.**





❑ REASONABLE PROTECTIVE MEASURES

- ❑ *„it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret”*





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❑ **Identification of trade secrets**

- **The information can be of a:**
 - **technical (for example, a manufacturing process or software)**
 - **commercial (for example, a customer or client list) nature.**
 - **strategic, long-term knowledge (for example, a recipe or chemical compound),**
 - **or more short-lived (for example, the results of a marketing study, the name, price and launch date of a new product).**





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□ *know – how*

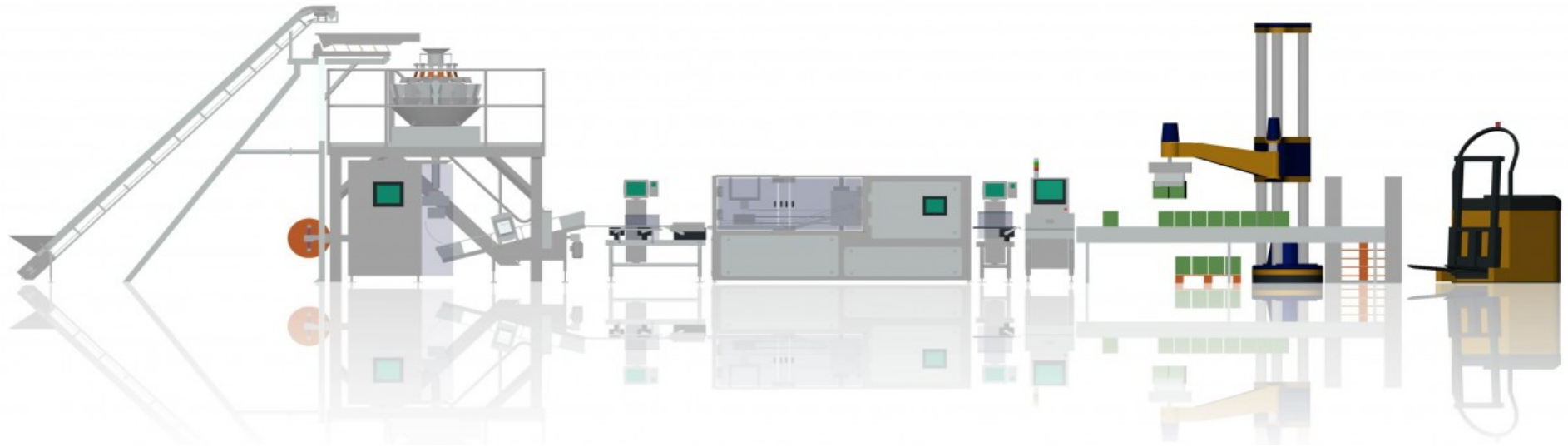
▪ *technical*





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- *know – how*
- *technology*

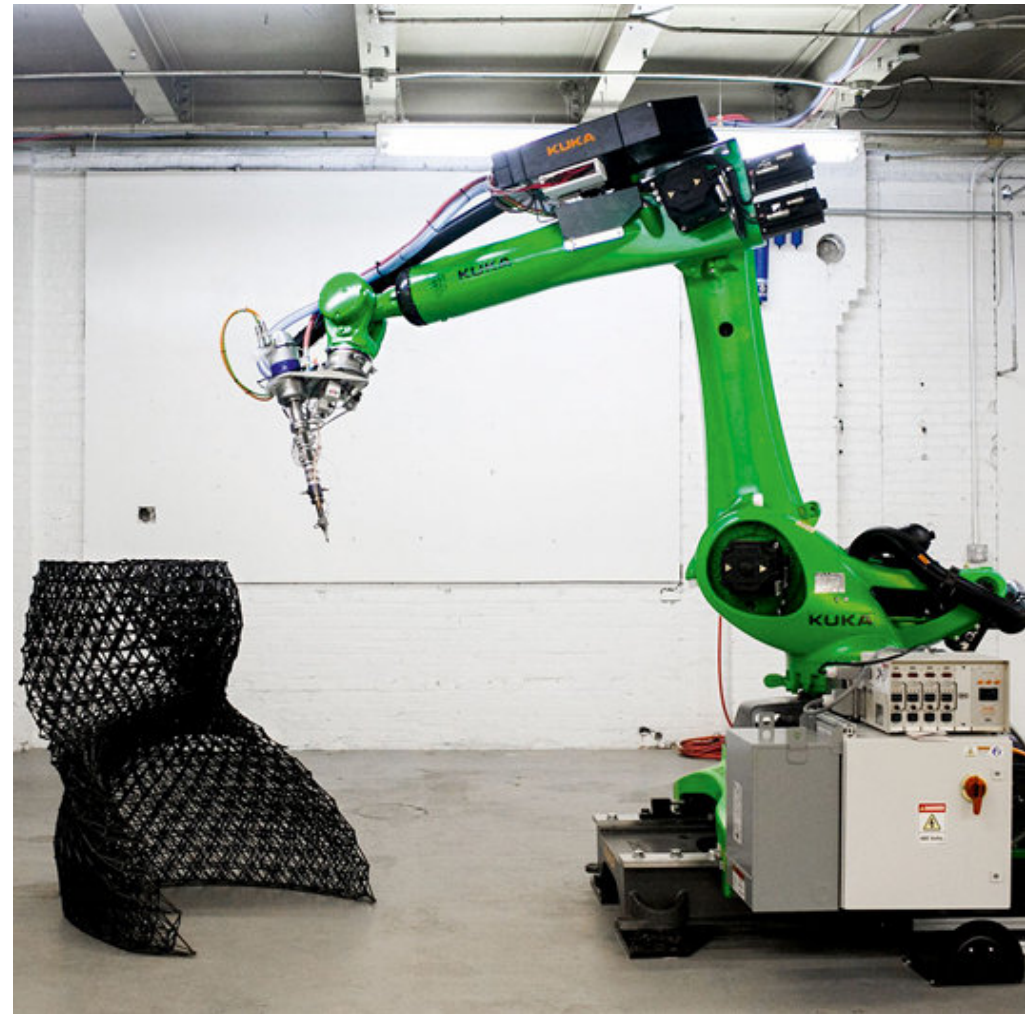




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□ ***know – how***

➤ ***technical / technology***





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- *know – how*
- *logistics*

TOP SECRET

CONFIDENTIAL

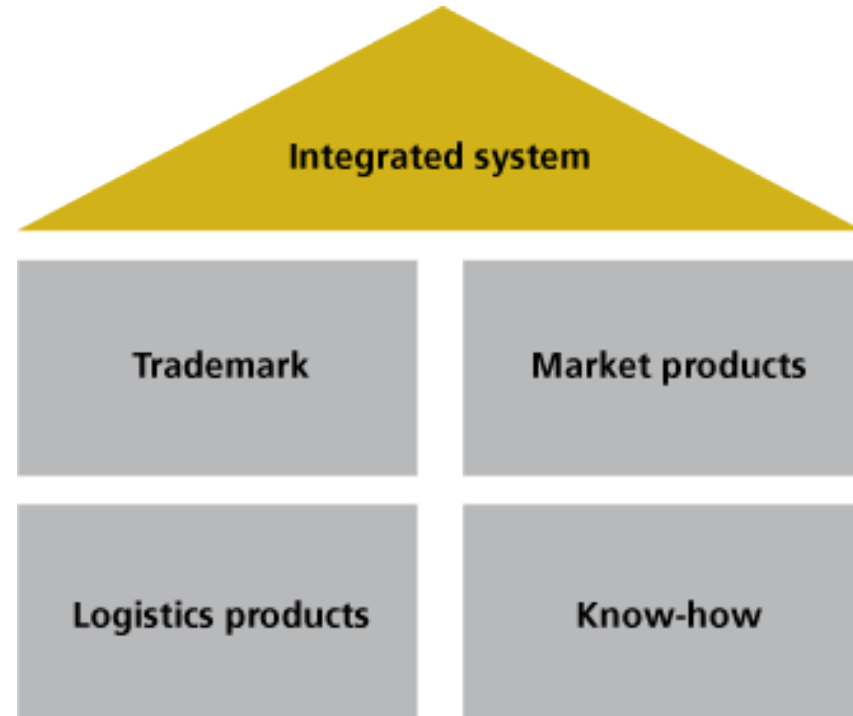




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- ❑ *know – how*
- *buisness model*

*Know
→ how!*





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- *know – how*
- *data base*





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- ❑ **Trade secrets are at the origin of copyright, trademarks (a new branded product), and designs (a design of a new car model).**





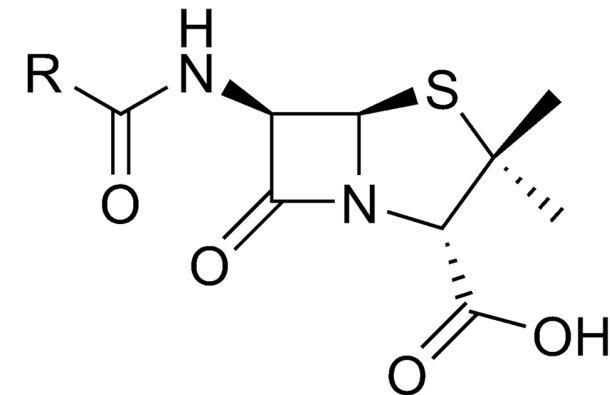
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- **Trade secrets are also used in relation to commercially valuable information for which there is no IPR protection, but for which investment or research are nevertheless required and which are important to innovation (a new business idea, recipe for a perfume, or recipe for a food product).**
- **Trade secrets are another form of appropriation of intangible assets which is highly complementary to IPRs, the difference being that in the former case no exclusivity of rights is granted.**



- Usually companies use secrecy when the information in question cannot be protected by patents or other IPRs. One of the most well-known is the Coca-Cola® recipe which has been kept secret since 1886.





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❖ **CONCLUSIONS**

- ❑ **Trade secrets are important to all industry sectors, including services.**
- ❑ **The concept of the Directive is to aim at a protection system for trade secrets as comparable to the protection of other IP objects.**
- ❑ **Trade secrets can take many forms and include everything from algorithms through to chemical formulas, processes, business plans, and customer lists.**
- ❑ **A trade secret is a valuable piece of information for an enterprise that is treated as confidential and that gives that enterprise a competitive advantage.**



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Thank you for your attention

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