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Integrating Trade Secrets in Sectors Involving New Technologies: What's New?

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OUTLINE

- I. Why integrating TS in sectors involving new technologies?
- II. Are there TS in sectors involving new technologies?

I. Why integrating TS in sectors involving new technologies?

- *Broader in scope of application than patent:*

 commercially valuable information

 short life-cycle

- *Subjects: Recital 1, artt. 2 and 4 of the TS Directive 2016/943*

II. Are there TS in sectors involving new technologies?

A. Access Requirements (art. 2. Directive 2016/943)




Recital 14: such know-how or information should have a commercial value, whether actual or potential.

- (1) 'trade secret' means information which meets all of the following requirements:
 - (a) it 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;
 - (b) it has commercial value because it is secret;
 - (c) it has been subject to **reasonable** steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

Higher diligence?

II. Are there TS in sectors involving new technologies?

B. Access Requirements: do they apply here?

- i. Protection of know-how (in fields involving new technologies) 
- ii. Protection of software (algorithms and codes) 
- iii. Protection of data collections 
- iv. Protection of AI-based systems
- v. Protection of machine-generated data



II. Are there TS in sectors involving new technologies?

B. Access Requirements: do they apply here?

iv. Protection of AI-based systems

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v. Protection of machine-generated data

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II. Are there TS in sectors involving new technologies?

B. Access Requirements: do they apply here?

v. Protection of machine-generated data

- Protection applies to any kind of information
- Recital 14 of TS Directive: Trivial information not protected, however when aggregated it does have a commercial value
- Disclosure kills the protection only when it eliminates the economic value of the information

II. Are there TS in sectors involving new technologies?

B. Access Requirements: do they apply here?

Protection v. rights interfering with it

- GDPR (arts. 13-15 access data on automated decisions)
- Art. 61 of the Reg. on surveillance of motor vehicles (on access to data for enabling competition in secondary markets)
- Art. 17 of the Mifid II Directive (on finance market security in case of algorithmic-based trading models)
- Art. 8 of the Enforcement Directive (on access to information on the source and distribution networks in case of IPRs infringement)

RISKS?



THANKS!

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