



Draft Law on the Protection of Trade Secrets

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Drawing on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), to which Türkiye is a party, and EU Directive 2016/943, the Draft Law on the Protection of Trade Secrets (the "Draft") prepared by the Ministry of Trade has been released for public consultation. The Draft aims to establish, for the first time, a standalone law that defines trade secrets, delineates their scope and sets out protection mechanisms within a comprehensive framework, thereby seeking to supersede the fragmented regulatory framework currently in place. The entry into force of the Draft is expected to significantly facilitate the achievement of equivalent legal protection standards with the EU in the areas of access to digital systems, data sharing and conformity assessment. In this article, we have examined the main provisions of the Draft.

General Rationale and Legislative Framework

According to the general rationale of the Draft, the shift toward data-driven supply chains and the acceleration of digital trade make it imperative for countries to harmonize their data protection standards. In this context, the Draft is designed to establish a legal infrastructure that will facilitate Türkiye's integration into EU mechanisms such as the Digital Product Passport (DPP) and the EPREL database. Given that provisions relating to trade secrets are currently scattered across the Turkish Code of Obligations, the Turkish Commercial Code, the Turkish Penal Code, the Labor Law and various professional regulations, failing to provide sufficient foreseeability and legal certainty, the Draft aims to establish a standalone, comprehensive and systematic protection regime dedicated to trade secrets.

New Definitions and Concepts

The Draft defines the concepts of "trade secret," "trade secret holder," "infringer" and "infringing product" which have not previously been framed in this manner in any Turkish legislation.



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Adopting the three-element definitional framework of the TRIPS Agreement and EU Directive 2016/943, the Draft defines a trade secret as information that is not known to or readily accessible by persons operating in the same or similar field, in whose confidentiality the holder has a legitimate interest (constitute a secret), that has commercial value because it is secret (commercial value and legitimate interest), and that has been subject to necessary and reasonable measures by its holder to keep it secret under the circumstances (intent to protect).

The definition is drafted in broad and inclusive terms without resorting to an exhaustive enumeration, thereby allowing new types of information arising from technological developments to fall within its scope. While the rationale cites customer lists, formulas, algorithms, manufacturing processes, pricing policies and strategic plans as examples, it also emphasizes that assessments must be made on a case-by-case basis.

A trade secret holder refers to any natural or legal person who lawfully holds title to a trade secret and holds the authority to dispose of it. Persons who have not yet commenced commercial activities but possess secrets they plan to use in the future also fall within this scope.

An infringer refers to any natural or legal person who unlawfully acquires, uses or discloses a trade secret; an infringing product refers to any good or service whose design, characteristics or manufacturing process significantly benefits from trade secrets that have been unlawfully acquired. This definition, covering both goods and services, goes beyond the narrower concept of "infringing goods" commonly found in comparative law.

Lawful and Unlawful Acts

Lawful Acquisition, Use and Disclosure

The Draft expressly sets out the circumstances under which a trade secret may be lawfully acquired, and deems the following as lawful: acquisition with the consent of the trade secret holder; independent discovery or creation; reverse engineering through the analysis, testing or disassembly of a product or service that has been lawfully obtained from persons not subject to any confidentiality obligation, or that has been made publicly available; acquisition in a manner consistent with the principle of good faith under the relevant circumstances; and acquisition by employees, representatives or agents in the exercise of their statutory or contractual rights. Accordingly, the use and disclosure of a trade secret lawfully acquired through any of the foregoing means is also deemed lawful, provided there is no statutory or contractual restriction to the contrary.

Unlawful Acquisition, Use and Disclosure

The Draft expressly qualifies certain acts relating to the acquisition, use and disclosure of trade secrets as unlawful. Accordingly, the following are deemed unlawful: acquiring a trade secret through unauthorized access to, seizure of, or copying of documents, objects, materials or electronic data under the lawful control of the trade secret holder; acquiring a trade secret in a manner contrary to the principle of good faith under the circumstances of the case; using or disclosing a trade secret that has been unlawfully acquired; using or disclosing a trade secret in breach of a confidentiality agreement or a contractual non-disclosure obligation; acquiring, using or disclosing a trade secret from an infringer while knowing or having reason to know that the secret was unlawfully obtained; and manufacturing, placing on the market, importing, exporting or storing infringing products while knowing or having reason to know of their infringing nature.

Exceptions

The Draft excludes the acquisition, use and disclosure of trade secrets from the scope of unlawfulness under certain conditions. In line with the approach adopted in the EU Directive, the acquisition, use or disclosure of a trade secret shall not be deemed unlawful where it is

carried out for the purpose of exposing illegal activities in the general public interest; in the exercise of freedom of expression and dissemination of thought, freedom of the press and the right to access information; by employees providing information to employee representatives to enable them to perform their duties under applicable legislation; or for the protection of a legitimate interest recognized by law.

Rights of the Trade Secret Holder and Protection Mechanisms

General Rights

The trade secret holder has the right to seek the prevention of the unlawful acquisition, use or disclosure of its trade secrets, or to claim compensation for damages resulting from such acts.

Interim Measures

The Draft allows interim measures to be sought from the court where a trade secret has been unlawfully acquired, used or disclosed, or where there is an imminent threat thereof. In this regard, in addition to the general provisions of the Code of Civil Procedure, the court may order (i) a temporary prohibition on the use and disclosure of the trade secret, (ii) a prohibition on the manufacture, marketing, import, export or storage of infringing products, (iii) the temporary seizure of infringing products and their entrustment to a custodian until the conclusion of the proceedings, and (iv) the blocking of access to, encryption of, or seizure of documents, objects or electronic data containing the trade secret. Additionally, the party facing an infringement claim may be permitted to continue using the information alleged to constitute a trade secret, provided that it posts a security deposit determined by the court; however, disclosure of such information shall not be permitted under any circumstances.

In assessing interim measures, the court shall take into account the value and other characteristics of the trade secret; the protective measures taken by the trade secret holder; the intent of the infringer in acquiring, using and disclosing the trade secret; the actual or potential impact of the unlawful use or disclosure; the legitimate interests of the parties and the impact of granting or refusing the measure on each party; the legitimate interests of third parties; the public interest; and the safeguarding of fundamental rights and freedoms.

Legal Proceedings

The trade secret holder may request the competent court to order (i) a determination of infringement, (ii) a prohibition on the unlawful acquisition, use and disclosure; the recall of infringing products, the removal of their infringing character, or their destruction, (iii) the elimination of the unlawful situation caused by the infringement; the correction of false statements and the destruction of the means and goods giving rise to such situation, and (iv) the destruction or delivery to the trade secret holder of documents, objects or data containing the trade secret. The Draft also grants the court the discretion to award damages in lieu of the foregoing remedies where the infringer has acted in good faith or where such remedies would produce disproportionately severe consequences.

Damages and Criminal Provisions

The trade secret holder may also claim material and moral damages. In determining the amount of damages, all adverse economic effects suffered by the trade secret holder, including loss of profit, as well as the gains obtained by the infringer through the unlawful use, shall be taken into account. As a minimum level of damages, the reasonable royalty that would have been payable for the lawful licensing of the trade secret shall serve as the baseline, and any proven damages exceeding this amount may additionally be claimed. This minimum damages mechanism envisaged by the Draft is being introduced for the first time in Turkish law specifically for trade secrets, providing trade secret holders with a concrete safeguard in cases where the quantification of damages proves difficult.

Furthermore, the Draft imposes sanctions for trade secret infringements, prescribing different penalty thresholds based on the type of infringement and the degree of intent.

Protection of Trade Secrets During Judicial Proceedings

The Draft contains detailed and comprehensive protection provisions specific to judicial proceedings. As a fundamental principle, information may not be withheld from the court on the grounds that it constitutes a trade secret. Nevertheless, the Draft also provides a range of procedural mechanisms for the protection of trade secrets during the course of proceedings.

Miscellaneous Provisions

Publication of Judgments

Upon the request of either party, the court may order the partial or full publication of a final judgment concerning the unlawful acquisition, use or disclosure of a trade secret. The court shall determine the form and scope of the publication, taking into account the value of the trade secret, the conduct of the infringer and the consequences of the infringement.

Disclosure of Secrets to Public Authorities and Obligations of Public Officials

Trade secrets may be requested in writing within the scope of inquiries, prosecutions and investigations conducted by courts and public prosecutor's offices, as well as financial or administrative audit activities. Trade secret holders are obligated to provide the requested information and documents to courts and public prosecutor's offices under all circumstances. In the case of audit activities, however, this obligation is conditional upon the request being directly related to the duty, limited to the purpose of the request and necessary for the audit activity. Public institutions or organizations requesting secrets are also required to state the reason for the request and the legal basis of their authority. Public officials and other persons who become aware of secrets within the scope of the Draft may not share, hand over or disclose such secrets to anyone other than the competent authorities, nor may they use them for any benefit or to cause harm. This obligation continues even after leaving office, and the relevant persons are required to take all necessary measures to safeguard the information and documents relating to the secrets they have learned.

Competent Court, Jurisdiction and Statute of Limitations

Unless otherwise provided, the competent court for actions under the Draft is the commercial court of first instance, and the court with jurisdiction is the court of the trade secret holder's domicile.

Claims shall become time-barred upon the expiry of one (1) year from the date on which the trade secret holder becomes aware of the infringement and the identity of the infringer, and in any event upon the expiry of five (5) years from the date of the unlawful acquisition, use or disclosure. In line with the structure adopted in the EU Directive, the Draft provides for a dual system of short and long limitation periods.

Conclusion

The Draft establishes, for the first time in Turkish law, a standalone and comprehensive protection regime specific to trade secrets, aiming to eliminate the uncertainty arising from the fragmented legislative framework.

These provisions are considered to have the potential to encourage innovative ventures by strengthening the confidence of trade secret holders and to create a more predictable legal environment for foreign investors. The Draft's alignment with EU Directive 2016/943 also constitutes a significant step in Türkiye's digital integration processes with the EU.