

Q283



**National Group:** Hungary  
**Title:** **Protection of trade secrets during litigation and other proceedings**  
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## Questions

### I. Current law and practice

Please answer the below questions with regard to your Group's current law and practice.

*Note: unless expressly indicated otherwise, for purposes throughout these Study Guidelines, “proceeding” may be any civil court proceeding or action (including, e.g., cases on the merits, preliminary injunction proceedings, discovery applications/motions, evidence gathering/preservation procedures including seizures, et al.).*

- 1) Does your Group’s current law provide for the protection of trade secrets for or during any of the following stages of civil proceedings? Please tick all that apply. Please explain.
- [complaint/pleading/writ of summons initiating a proceeding](#)
  - [any other pleadings or submissions filed in the context of a proceeding](#)
  - [production of documents during discovery phase or court-ordered production of evidence](#)
  - [evidence seizure](#)
  - [prepared-for-litigation technical description/declaration or any other exhibits](#)
  - [oral hearing](#)
  - [hearing transcripts](#)
  - [witness statements made out of court and on the record for use in litigation \(e.g., deposition\)](#)

- court decision
- potential for future misuse of trade secret information gained from claimant or defendant during the proceeding
- other, namely .....

The below provisions of the Code of Civil Procedure (Act CXXX of 2016, the 'CCP') apply to all civil proceedings.

Pursuant to Section 163(2) CCP, the parties and their representatives may exercise the right to access documents for inspection and to make copies, where such documents contain business secrets, - subject to a confidentiality agreement made out in writing -, according to the rules and under the conditions laid down by the judge. If, however, the party entitled to grant an exemption from the obligation of confidentiality made a statement in due time under Subsection (2) of Section 322, in which he refused to allow access to the document containing any business secret, apart from the court no other person shall be allowed access to that part of the document containing such secrets, and it may not be copied and no extracts can be made thereof.

Under Section 163(4) CCP access to the court records, and to the documents containing the secret referred to, and the release of information as to their contents, furthermore, the making of copies and extracts of any document containing the secret specified may be permitted only to exactly specified person.

According to Section 231(2) CCP, the court may - of its own motion or at the party's reasoned request - declare the hearing on the whole or certain part of the hearing closed from the public, where this is deemed appropriate for the protection of business secrets or any other information that is rendered confidential by an act.

IP statutes (the Trademark Act, the Patent Act, etc.) make it possible for the court to declare a hearing closed upon a reasoned request of the parties in lack of the above mentioned justifications.

Pursuant to Section 289(1)(b), (2) and (5) CCP, the following shall not be required to testify: any person who was not exempted from the obligation of confidentiality, in respect of any subject that is treated as classified information. The obligation of confidentiality shall remain in effect after the termination of the underlying relationship. The testimony of a witness obtained in violation of this Section shall be inadmissible.

Based on Section 290(1)(d) CCP giving witness testimony may be refused by persons bound to keep business secrets in respect of the subjects if their testimony would entail their having to breach the obligation of confidentiality, except where such data affected by the testimony does not qualify as business secrets according to the act on the availability of public information and information of public interest.

Under Section 322(2), (3) and (4) if a document made available contains any business secret, the use of which had not been authorized by the original classifier or the person entitled to grant an exemption from the obligation of confidentiality (hereinafter referred to as "classifier"), the court shall contact the original classifier or the classifier requesting access to the classified information or secret, except where the contents of the document does not qualify as business secrets under statutory provisions, or if the goal of the action is to decide whether the content of the document in question is to be treated as public information.

If the classifier fails to respond within eight days of receipt of the request, the authorization shall be considered granted, of which the classifier must be advised. In other respects the provisions on the right to refuse to give evidence shall apply. If the classifier refuses to grant consent within the prescribed time limit for access by the parties to the business secret the part of the document affected shall not be admitted as evidence.

Additional, specific rules govern trade secret misappropriation court cases regulated by the Act LIV of 2018 on the Protection of Trade Secret (the 'Trade Secret Act') which implements the EU Directive 2016/943 on the protection of undisclosed know-how and business information (the 'EU Directive 2016/943').

- 2) Under your Group's current law, is there a requirement:
- a) for specificity in the pleadings (e.g., the trade secret allegedly misappropriated is required in written documents provided to the court); and/or
  - b) that knowledge of the trade secret details be known by more than defendant's outside counsel (e.g., General Counsel, Managing Director, or other types of representatives), so that a defendant can properly defend against a charge of misappropriation of a trade secret? If YES, please explain.

Yes, there is a specificity requirement, i.e. all trade secrets relevant to the case (whether a trade secret misappropriation case or other case involving trade secrets) must be produced to the court in writing.

Yes, the trade secrets relevant to the case shall be known by more than the defendant's outside counsel (whether a trade secret misappropriation case or other case involving trade secrets), namely, the defendant or in case of an entity, at least the legal representative of the defendant.

- 3) Under your Group's current law, do any remedies exist for the holder of the trade secret to "re-establish" or "re-gain" the status of a trade secret exposed during a Disclosure action<sup>1</sup>, or more generally during civil proceedings? That is, can a trade secret exposed during a civil proceeding effectively be made or held "secret" so as to still be considered a trade secret? If YES, please explain.

No, according to Hungarian law no remedial procedure is known for re-establishing or re-gaining the status of a trade secret. In case the secret handling of a trade secret has been requested from the court and the court proceeds accordingly, its secrecy is deemed to be maintained. please note, that there is no English type "disclosure action" under the Hungarian procedure.

## **II. Policy considerations and proposals for improvements of your Group's current law**

- 4) Could your Group's current law or practice relating to the protection of trade secret(s) during civil proceedings be improved? Please explain.

YES

The Hungarian laws do not set out any special limitation period for the infringement of trade secrets, therefore the general rule under the Hungarian Civil Code (i.e. 5 years) apply. The 6-year maximum limitation period of the EU Directive 2016/943 would be slightly more favorable for the holders of trade secret.

We would welcome a regime where, upon the secret holder's request, trade secrets shall not be accessible to the other party (e.g. alleged infringer), but only to the legal representative and to those whose involvement in the procedure is necessary (e.g. experts).

- 5) In order to limit disclosure of a trade secret, should there be more specific requirements regarding access by a party to a trade secret during a civil proceeding? Please explain.

YES

We would limit access to trade secrets to representatives (and its experts) upon the secret holder's request.

- 6) Should remedies to re-establish or regain a trade secret be available to the trade secret holder:
- a) if the disclosure of the trade secret during the proceeding occurred intentionally due to a legal requirement (e.g., a legal requirement to specify the basis of a claim, in response to a court order, etc.);

No, we would recommend that the scope of those who can gain access to trade secret should be properly limited.

- b) if the disclosure of the trade secret occurred intentionally before exhaustion of all available legal protections, (e.g., protection order, redaction of transcripts, etc.);

No. Granting provisional measures regulated by the EU Directive 2016/943 and the Trade Secret Act properly provides adequate safeguards for immediate legal protection before a final decision is taken.

- c) if the disclosure of the trade secret occurred unintentionally before exhaustion of all available legal protections;

No, same as above set out point b).

- d) other, namely....?

*Please answer YES or NO for each. Please explain.*

**III. Proposals for harmonisation**

Please consult with relevant in-house / industry members of your Group in responding to Part III.

8) Does your Group believe that there should be harmonisation in relation to the protection of trade secrets during civil proceedings? Please answer YES or NO.

If YES, please respond to the following questions without regard to your Group's current law or practice.

Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.

YES.

9) Does your Group believe that there should be protection of trade secrets for or during any of the following stages of civil proceedings? Please tick all that apply. Please explain.

- [complaint/pleading/writ of summons initiating a proceeding](#)
- [any other pleadings or submissions filed in the context of a proceeding](#)
- [production of documents during discovery phase or court-ordered production of evidence](#)
- [evidence seizure](#)
- [prepared-for-litigation technical description/declaration or any other exhibits](#)
- [oral hearing](#)
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- [court decision](#)
- [potential for future misuse of trade secret information gained from claimant or defendant during the proceeding](#)
- other, namely .....

10) During a proceeding, what limits and/or restrictions should there be on Disclosure actions and/or procedures (such as a saisie contrefaçon or other seizure) to limit the unnecessary production of trade secrets, thereby reducing the risk of unnecessary disclosure to those involved in the proceeding and leakage into the public domain? For example:

- a) should a court bailiff conducting seizure of evidence identify and separate and keep separate documents relating to trade secrets solely by virtue of the document being labelled a trade secret and/or confidential;
- [b\) should a witness testifying about a trade secret do so only with the judge, with the judge and outside counsels, or similar limited-audience proceeding;](#)
- c) should a document (whether or not marked as, e.g., “confidential” and/or “trade secret,”) containing a trade secret that is accidentally disclosed during a proceeding be retractable and not considered a public disclosure;
- [d\) should a broad injunction prohibiting use of a disclosed trade secret accompany a Disclosure action and/or](#)
- e) other, namely ....?

The Hungarian Group would welcome a regime where, upon the secret holder’s request, trade secrets shall not be accessible to the other party (e.g. alleged infringer), but only to the legal representative and to those whose involvement in the procedure is necessary (e.g. experts). Classification as “trade secret” should be contested and where the court denies this classification (with an appealable resolution) the given evidence shall be freed for disclosure.

- 11) Should a trade secret be able to “re-gain” its trade secret status after a disclosure action during a civil proceeding? What conditions should there be to allow the recovery, e.g., trade secret was appropriately marked as “confidential,” and/or “trade secret”?

NO.

The Hungarian Group does not see the rationale of such regulation.

- 12) Which, if any, of the following should be required or encouraged in any civil litigation in order to maintain a balance between protecting the allegedly misappropriated trade secret and allowing a defendant to defend against a misappropriation charge?

Please tick all that apply. Please explain.

- [limit access to the trade secret details to defendant’s outside counsels only;](#)
- limit access to the trade secret details to a limited number and type of defendant’s inhouse representatives (e.g., General Counsel, Managing Director, Chief Technology Officer, etc.) and outside counsel;
- [limit access to the trade secret details to hired third party expert\(s\) to view and provide directed findings regarding the trade secret details \(e.g., court-ordered expert or defendant’s hired expert and plaintiff’s hired expert meet separate from the parties to compare the plaintiff’s trade secret details with the defendant’s information\); and/or,](#)
- [allow the defendant to challenge the confidentiality or trade secret status of a document / material during the proceeding](#)
- other, namely....?

The Hungarian Group would welcome a regime where, upon the secret holder's request, trade secrets shall not be accessible to the other party (e.g. alleged infringer), but only to the legal representative and to those whose involvement in the procedure is necessary (e.g. experts). Classification as "trade secret" should be contestable and where the court denies this classification (with an appealable resolution) the given evidence shall be freed for disclosure.

- 13) Should there be a requirement in trade secret misappropriation cases such that in response to a first identification of a trade secret, there is an immediate redaction of all specific trade secret details from the hearing transcripts, court decisions, or other written document before publication?

YES.

The Hungarian Group considers that it must be safeguarded that trade secrets are only accessible to persons whose access has been permitted.

- 14) How can one, since injunctions naturally are limited in geographical scope, adequately protect trade secrets obtained during the course of a proceeding against misuse in a different jurisdiction?

The Hungarian Group recommends that the court shall order persons who wish to have access to trade secrets, to make a confidentiality statement. In case of breach, the breaching party can be sued in any jurisdiction in accordance with general international procedural rules for the breach of the confidentiality statement.

- 15) Should evidence involving trade secrets be preserved by the civil court or another after the proceeding has concluded? Please explain.

YES.

The Hungarian Group believes that evidence should stay with the civil court.

- 16) Please comment on any additional issues concerning the protection of trade secrets in civil proceedings that you consider relevant to this Study Question.

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- 17) Please indicate which industry/cultural sector views provided by in-house counsel are included in your Group's answers to Part III.

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