Trade Secret Protection in Europe

A Comparative Analysis of Remedies

France · Germany · Italy · Spain · United Kingdom

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1. Introduction

The protection of trade secrets represents a critical component of intellectual property law across Europe. The **Directive (EU) 2016/943 on the Protection of Undisclosed Know-how and Business Information (Trade Secrets)** established a harmonized legal framework designed to address the evolving challenges of industrial espionage, employee mobility, and unauthorized disclosure in the digital age. This Directive represents a paradigm shift in European trade secret jurisprudence, moving away from reliance solely on national common law and fragmented statutory provisions toward a comprehensive, rights-based approach that emphasizes both substantive protection and effective remedies.

This report examines the transposition and application of the Directive across five key European jurisdictions: France, Germany, Italy, Spain, and the United Kingdom. Rather than providing a comprehensive overview of substantive trade secret law, this analysis concentrates specifically on the remedies available to trade secret holders when their rights are infringed. The remedial framework is essential to the practical value of trade secret protection, as even the most carefully drafted legislative definition of a protected secret provides little utility without effective enforcement mechanisms. The jurisdictions selected represent a diverse cross-section of European legal traditions, from civil law systems with comprehensive codification to common law traditions relying on equitable principles and court-developed doctrine.

Throughout this analysis, we examine the specific remedial provisions enacted by each jurisdiction, including injunctive relief, damages calculations, provisional measures, corrective measures, and specialized enforcement procedures. The report also considers the interaction between trade secret law and broader legal principles such as freedom of expression, employee mobility rights, and public interest considerations. By comparing the remedial architectures across these five jurisdictions, we can identify both convergent principles and significant divergences in how European law addresses the enforcement of trade secret rights.

2. France

2.1 Legislative Framework

France transposed the Trade Secrets Directive through the enactment of Loi n°2018-670 du 30 juillet 2018, which introduced Articles L151-1 through L154-1 into the Code de commerce. This comprehensive legislative intervention was supplemented by Décret n°2018-1126, which provided detailed implementing regulations. The French approach integrates trade secret protection into the broader framework of unfair competition law, reflecting the civil law tradition's emphasis on codification and systematic regulation.

The definition of a trade secret under French law is established in Article L151-1 C.com. A trade secret is characterized by three cumulative elements: first, the information must be not generally known or easily accessible to persons within the circles that normally deal with the kind of information in question; second, it must have commercial value because it is secret; and third, the person lawfully in control of the information must have taken reasonable steps to maintain its secrecy. Article L151-2 C.com clarifies the concept of the holder of a trade secret, encompassing not only natural persons but also legal entities, including state entities and public bodies that lawfully control confidential information.

French law distinguishes between lawful and unlawful methods of obtaining trade secrets. Article L151-3 C.com specifies that obtaining trade secrets through lawful means—such as independent discovery, observation from public sources, deduction from publicly available information, or reverse engineering—does not constitute an infringement. In contrast, Article L151-4 C.com establishes that unlawful obtaining occurs when a person acquires the trade secret without the consent of the holder through unauthorized access, theft, deception, breach of obligation, or any other conduct contrary to honest commercial practices. Article L151-5 C.com extends liability to the unlawful use or disclosure of trade secrets once they have been obtained through prohibited means, including disclosure to third parties without authorization.

The French regime recognizes third-party liability for trade secret infringement. Article L151-6 C.com provides that a person who uses or discloses a trade secret obtained from a third party is liable if that person knew, or reasonably ought to have known, that the information was unlawfully obtained. This creates a chain of liability that extends beyond the initial wrongdoer to subsequent recipients of illicitly obtained secrets, thereby enhancing the practical utility of the statutory protection. Finally, Article L151-8 C.com establishes important exceptions and defenses to liability, including disclosures made in the public interest, disclosures required by law or regulation, and disclosure necessary to protect an individual's legal interests or to establish the lawfulness of conduct.

2.2 Remedies

The French Code de commerce provides a comprehensive remedial framework for trade secret infringement. Article L152-1 C.com establishes the foundation for civil liability, permitting the trade secret holder to seek judicial remedies against any person engaging in unlawful obtaining, use, or disclosure of protected information. The applicable limitation period for actions is established in Article L152-2 C.com as five years from the date of discovery of the infringement by the trade secret holder.

Injunctive relief represents a primary remedy in French trade secret law. Article L152-3 C.com authorizes courts to order the cessation of any unlawful obtaining, use, or disclosure of trade secrets. Additionally, courts may issue orders requiring the elimination of trade secrets from the defendant's possession, prohibit the production or marketing of goods manufactured using unlawfully obtained secrets, and mandate the recall and destruction of such goods. These injunctive remedies are complemented by Article L152-4 C.com, which empowers courts to adopt provisional and conservatory measures, including seizure and preliminary injunctions. The detailed provisions governing provisional measures are elaborated in Article R152-1 C.com, which specifies the conditions under which courts may grant such interim relief pending final judgment.

The damages framework in French trade secret law is multifaceted and designed to provide flexible remedies tailored to the circumstances of each case. Article L152-5 C.com permits courts to award compensatory indemnity in lieu of an injunction in cases where an injunction would be disproportionate to the prejudice suffered or where compensation would be adequate to protect the trade secret holder's interests. Article L152-6 C.com establishes the criteria for calculating damages, which may include the economic consequences of the infringement (lost profits, lost market share), moral harm, unjust enrichment derived by the infringer, or alternatively, a lump sum established by the court based on considerations of equity. This flexible approach permits courts to fashion remedies that adequately compensate the trade secret holder while recognizing the diverse circumstances under which infringements occur.

Additional remedial provisions address transparency and procedural fairness. Article L152-7 C.com permits courts to order the publication of their decisions concerning trade secret infringement, thereby serving both deterrent and informational functions. Article L152-8 C.com addresses abusive or dilatory proceedings by empowering courts to order the infringer to pay damages to compensate the trade secret holder for losses caused by frivolous or obstreperous litigation. Confidentiality protections are ensured through Article L153-1 C.com and Article L153-2 C.com, which require that trade secret holders be permitted to request that proceedings be kept confidential during litigation and impose confidentiality obligations on all parties and judicial officers involved.

2.3 Key Case Law

French jurisprudence on trade secret protection has evolved significantly over recent decades. The Cour de Cassation (Supreme Court of Cassation) has issued several landmark decisions that have shaped the interpretation and application of trade secret law. In Cass. com. 27 May 2015 (n°14-50.042), the court addressed the requirements for establishing trade secret status and the necessity of demonstrating that reasonable measures had been taken to maintain secrecy. Cass. com. 3 June 2014 (n°13-10.670) examined the distinction between lawful reverse engineering and unlawful misappropriation, providing important guidance on the permissible methods of obtaining information. Cass. com. 16 April 2013 (n°12-14.578) addressed damages calculation in trade secret cases, emphasizing the necessity of establishing a causal nexus between the infringement and the harm suffered. Cass. com. 27 April 2011 (n°10-16.618) examined the liability of third parties who knowingly use information obtained through unlawful means. Finally, Cass. com. 29 March 2011 (n°10-17.647) addressed procedural aspects of trade secret litigation, including the burden of proof and the standard for granting preliminary injunctions.

Prior to the 2018 legislative reforms, French trade secret protection relied primarily on the doctrine of breach of confidence and general principles of unfair competition and delict. The 2018 law fundamentally modernized this framework by introducing a specific statutory definition of trade secrets, establishing clear standards for what constitutes unlawful obtaining or use, and providing detailed remedial provisions. The Cour de Cassation decisions cited above illustrate the evolution of French jurisprudence during this transitional period, demonstrating how courts have grappled with the practical application of trade secret principles in cases involving industrial espionage, employee departures, and corporate acquisitions.

3. Germany

3.1 Legislative Framework

Germany enacted the Gesetz zum Schutz von Geschäftsgeheimnissen (Trade Secrets Protection Act, GeschGehG) on 18 April 2019, establishing a comprehensive statutory framework for the protection of trade secrets distinct from existing provisions on unfair competition and the law of confidence. The GeschGehG represents Germany's formal transposition of Directive 2016/943 and introduces a rights-based approach to trade secret protection, moving away from the prior reliance on §§ 17–19 of the Gesetz gegen den unlauteren Wettbewerb (UWG) and general principles of tort law under the Bürgerliches Gesetzbuch (BGB). The preparatory work is documented in the official draft bill published as Bundesrat Drucksache 382/1/18 and the Bundesrat's position set out in Bundesrat Drucksache 382/18 (Beschluss).

The statutory definition of a trade secret appears in § 2 GeschGehG. A Geschäftsgeheimnis is information that is neither generally known nor readily accessible to persons in the relevant circles, derives commercial value from its secrecy, is the subject of reasonable confidentiality measures by its lawful holder, and in respect of which there is a legitimate interest in secrecy. § 3 GeschGehG identifies lawful means of acquisition, including independent discovery or creation and observation or reverse engineering of products lawfully in the acquirer's possession. § 4 GeschGehG defines unlawful acquisition, use and disclosure, including unauthorised access, breach of a duty to maintain confidentiality, and "acquisition through a third party" situations. § 5 GeschGehG sets out explicit exceptions safeguarding freedom of expression, whistleblowing on illegal activity, disclosures to employee representatives, and the protection of a legitimate public interest.

3.2 Remedies

The German legal system provides extensive remedial options for trade secret holders. § 6 GeschGehG establishes cease-and-desist claims (Beseitigungs- und Unterlassungsansprüche) as the primary civil remedy, covering acquisition, use and disclosure and triggered already by a first concrete risk of infringement (Erstbegehungsgefahr) or the danger of repetition (Wiederholungsgefahr). § 7 GeschGehG complements this with a catalogue of corrective measures against "infringing products": destruction, recall from the channels of commerce, permanent removal from the market, and modification so as to eliminate the infringing feature. § 8 GeschGehG grants the holder a claim for information (Auskunftsanspruch) about the origin and distribution channels of infringing products and about persons involved, subject to a proportionality test.

The monetary remedies regime is anchored in § 10 GeschGehG, which makes intentional or negligent infringement grounds for damages. Following the three-fold calculation method (dreifache Schadensberechnung) familiar from German IP law, the claimant may elect between (i) actual loss including lost profits, (ii) surrender of the infringer's profits, or (iii) a reasonable licence analogy (Lizenzanalogie). § 11 GeschGehG further allows courts to substitute pecuniary compensation for injunctive and corrective measures where, exceptionally, the ordered measure would cause disproportionate hardship to the infringer acting in good faith. § 9 GeschGehG addresses liability of former employees and imposes confidentiality duties that survive the termination of employment, while § 12 GeschGehG provides a six-year limitation rule for most civil claims.

Procedural confidentiality is a key innovation of the Act. § 16 GeschGehG enables the court, upon application of a party, to classify information as "secrecy-protected" (geheimhaltungsbedürftig) for the entire duration of proceedings. § 17 GeschGehG provides for sanctions (fines up to €100,000 or imprisonment up to six months) against breaches of such confidentiality orders, and § 19 GeschGehG allows the court to restrict access to hearings, documents, and decisions, including the redaction of judgments. Jurisdiction in trade secret disputes is centralised by § 15 GeschGehG, which designates civil chambers of the Landgerichte (regional courts) as exclusively competent. On the criminal side, § 23 GeschGehG replaces the old UWG offences and punishes intentional acquisition, use or disclosure of trade secrets with up to three years' imprisonment, or up to five years in aggravated cases (e.g. commercial gain or disclosure abroad). Interim relief draws on the general instruments of the ZPO — in particular § 935 ZPO and § 940 ZPO (einstweilige Verfügung) — read together with the substantive claims under §§ 6–8 GeschGehG.

3.3 Key Case Law

German jurisprudence on trade secret protection is active at all levels of the federal judiciary. In BGH, 22 March 2018 – I ZR 118/16, "Hohlfasermembranspinnanlage II", the Bundesgerichtshof set out how a cease-and-desist claim based on the old § 17 UWG had to be pleaded with sufficient particularity — principles that continue to inform pleadings under §§ 6, 7 GeschGehG. BGH, 23 February 2012 – I ZR 136/10, "MOVICOL-Zulassungsantrag" defined the notion of "unauthorised securing" of trade secret-bearing documents, ruling that a person who already had lawful custody cannot commit misappropriation by "taking away" under the unfair competition provisions. BAG, 17 October 2024 – 8 AZR 172/23 held that the GeschGehG applies to cease-and-desist claims against former employees even where the risk of repetition is based on infringing conduct committed before the Act entered into force — an important ruling on transitional application in employment disputes. BVerwG, 5 March 2020 – 20 F 3/19 confirmed that the protection of trade secrets in § 2 GeschGehG is anchored in Article 2(1) of Directive 2016/943 and extends not only to the content of files but also to their external features (file name, file type, size), which informs in camera procedures under § 99 VwGO. BVerwG, 17 June 2020 – 10 C 22/19 interprets § 6 of the Federal Freedom of Information Act (IFG) as guaranteeing, as a minimum standard, the protection of Geschäftsgeheimnisse within the meaning of § 2 No. 1 GeschGehG — relevant to disputes about disclosure of commercially sensitive information held by public authorities. Finally, BGH, 7 July 2020 – X ZR 42/17, "Unberechtigte Schutzrechtsverwarnung III" addresses the interface between unjustified warning letters and the "established and operating business" tort, which indirectly shapes the risk assessment when a holder asserts trade secret claims too broadly.

4. Italy

4.1 Legislative Framework

Italy transposed Directive 2016/943 through Decreto Legislativo 11 maggio 2018, n. 63, which amended the Codice della Proprietà Industriale (CPI) originally enacted by Decreto Legislativo 10 febbraio 2005, n. 30. This legislative approach integrates trade secret protection into the existing framework of industrial property law, thereby maintaining conceptual continuity with Italy's existing intellectual property jurisprudence and placing segreti commerciali (expressly so renamed by the 2018 reform) alongside patents, designs and trademarks as titoli di proprietà industriale. The implementing regulation of the CPI was adopted by D.M. 13 gennaio 2010, n. 33, subsequently amended by D.M. 2021, n. 33-bis.

The core substantive provisions sit in Chapter II, Section VII of the CPI. Art. 98 CPI defines segreti commerciali as information which (a) is secret — not, as a body or in the precise configuration and assembly of its components, generally known or readily accessible to persons normally dealing with that kind of information; (b) has commercial value precisely because it is secret; and (c) has been subject to reasonable steps to maintain its secrecy by the person lawfully in control of it. Art. 99 CPI grants the holder of a trade secret the right to prohibit third parties from acquiring, revealing to third parties, or using the information in an abusive manner, save where acquired in an independent manner. The conduct-side complement is provided by the unfair competition provisions of the Codice Civile, notably Art. 2598 c.c. (acts of unfair competition) and Art. 2600 c.c. (damages and publication of the decision).

4.2 Remedies

The Italian remedial framework for IP rights — including segreti commerciali after the 2018 reform — is consolidated in Articles 121 and following of the CPI. Art. 121 CPI establishes a wide-ranging right of disclosure (ordine di esibizione) allowing the holder to obtain information about the origin and distribution networks of infringing goods. Art. 121-bis CPI, inserted by D.Lgs. 63/2018, codifies the holder's right to information from the infringer — identity of upstream producers, volumes, prices, and purchasers — mirroring Article 8 of Directive 2004/48/EC (IPRED) and Article 8 of Directive 2016/943. Art. 124 CPI sets out the core civil sanctions: inibitoria (prohibitory injunction), ordine di ritiro definitivo dal commercio, and destruction of infringing goods and the means used for their production.

Art. 125 CPI codifies the damages regime, which follows the three-fold calculation familiar from Italian IP law: lucro cessante (lost profits), reasonable royalty (giusta royalty), and restituzione degli utili (restitution of the infringer's profits) as a minimum floor. It also expressly allows the judge to determine damages on an equitable basis where exact quantification is impossible. Art. 126 CPI authorises the publication of the judgment at the infringer's expense (pubblicazione della sentenza), a measure of both deterrence and reputational restoration frequently awarded in Italian trade secret cases. For the specialised interim regime, Art. 129 CPI provides for descrizione (description order) and sequestro (seizure) — powerful evidentiary and preservation tools modelled on the saisie-contrefaçon, while Art. 131 CPI governs interim injunctions (inibitoria cautelare), including ex parte urgency measures.

Two further provisions specifically target segreti commerciali after the 2018 reform. Art. 132 CPI allows the court to substitute pecuniary compensation for injunctions and corrective measures where those measures would be disproportionate — closely mirroring Article 13(3) of Directive 2016/943. Art. 134 CPI confers exclusive competence on the Sezioni Specializzate in materia di impresa (the specialised "Tribunale delle Imprese" chambers) and imposes a duty of confidentiality on parties, witnesses and experts regarding information identified by the judge as protected segreto commerciale during proceedings. Procedurally, Art. 669-bis c.p.c. and following govern the cautelare interim regime used by the specialised IP chambers in trade secret disputes.

4.3 Key Case Law

Italian case law on segreti commerciali combines constitutional jurisprudence on IP enforcement with specialised decisions of the Sezioni Specializzate and the Consiglio di Stato on access and competition. Corte Costituzionale, sent. 170/2007 ruled on the constitutionality of Art. 134 CPI and confirmed that the attribution of exclusive jurisdiction over industrial property disputes (including what are now segreti commerciali) to specialised chambers is compatible with Articles 25 and 102 of the Constitution. Corte Costituzionale, ord. 425/2007 reiterated that position in a subsequent preliminary reference, underlining the importance of specialised adjudication for the effectiveness of IP remedies, including those protecting undisclosed know-how. Corte Costituzionale, sent. 112/2008 examined Art. 245(2) CPI — the transitional regime governing pending IP proceedings on entry into force of the CPI — and is regularly cited when issues arise over the temporal application of the 2018 reforms to earlier misappropriation conduct. Corte Costituzionale, ord. 386/2004 addressed the constitutionality of the legislative delegation for the enactment of the CPI itself, an important decision on the statutory base of the entire Italian trade secret framework. On the administrative side, Consiglio di Stato, Sez. V, sent. n. 8257/2024 analyses access-to-documents disputes in public procurement involving claims of segreto commerciale, applying Articles 98–99 CPI to determine which technical information in bidders' offers is properly protected from disclosure to competitors.

5. Spain

5.1 Legislative Framework

Spain implemented Directive 2016/943 through the enactment of Ley 1/2019, de 20 de febrero, de Secretos Empresariales (BOE-A-2019-2364), a statute specifically devoted to the protection of trade secrets. This legislation operates in conjunction with Ley 3/1991, de 10 de enero, de Competencia Desleal (the Unfair Competition Act), which continues to provide supplementary protection against unfair commercial practices involving trade secrets, notably through Art. 13 LCD (violation of secrets). The transposition was further coordinated with the general unfair competition reform effected by Ley 29/2009 and with the procedural rules of the Ley 1/2000 de Enjuiciamiento Civil (LEC). The Spanish approach reflects a deliberate legislative choice to establish a dedicated statutory regime for trade secret protection rather than integrating such protections into a broader intellectual property framework.

The definitional architecture of Ley 1/2019 is set out in Title I. Art. 1 delimits the object and scope of the Act, while Art. 2 defines a trade secret as any information or knowledge — including technological, scientific, industrial, commercial, organisational or financial — that is secret in the sense of not being generally known or readily accessible to persons within the circles that normally deal with it, that has business value precisely because it is secret, and that has been subject to reasonable measures to keep it secret. Art. 3 lists lawful means of obtaining trade secrets (independent discovery or creation, reverse engineering of lawfully acquired products, exercise of workers' information and consultation rights, and any other practice consistent with honest commercial practices), Art. 4 enumerates acts of infringement — unlawful obtaining, use and disclosure of the secret, including by persons bound by confidentiality obligations — and extends liability to so-called "infringing goods", while Art. 5 carves out exceptions for whistleblowing, freedom of expression and information, and the protection of legitimate general interests. The regime governing the trade secret as an object of legal transactions is addressed in Art. 6 (transmissibility), Art. 7 (co-ownership) and Art. 8 (licences).

5.2 Remedies

The Spanish remedial framework is concentrated in Title III of Ley 1/2019 (Actions for the defence of trade secrets). Art. 9 lists the civil actions available against an infringer: a declaration of infringement, cessation (or prohibition) of acts of infringement, prohibition of the manufacture, offering, placing on the market, importation, exportation or storage of infringing goods, seizure of infringing goods (including their delivery to the claimant), corrective measures (including delivery up or destruction), removal of the infringement from the market, full or partial publication of the judgment, and compensation for damages. Art. 10 governs the proportionality of corrective and prohibitory measures; whenever proportionality so requires, the court may substitute them with monetary compensation in favour of the injured party. Art. 11 sets out a detailed damages regime: the holder is entitled to compensation for actual losses and lost profits, for the moral prejudice caused, and for the investigation costs incurred in obtaining reasonable evidence of the infringement; damages may alternatively be calculated on the basis of the negative economic consequences suffered (including lost profits and unfair enrichment of the infringer) or, as a minimum, the amount of the royalties or fees that would have been due had the infringer requested a licence. Art. 12 allows the court to order publication of the decision at the infringer's expense. Art. 13 establishes a limitation period of three years from the moment the holder could have brought the action. Procedural specialities are codified in Title IV: Art. 14 confers subject-matter jurisdiction on the commercial courts (juzgados de lo mercantil), Art. 15 introduces robust measures for protecting the confidentiality of trade secrets during litigation (restricted access to documents and hearings, redacted versions of decisions, confidentiality clubs), Art. 16 regulates the preliminary investigation (diligencias de comprobación de hechos), Art. 17 governs measures for the securing of evidence, and Art. 18 authorises far-reaching provisional measures — including cessation orders, seizure of infringing goods, security deposits and ex parte interim relief in cases of urgency — by reference to Arts. 727 et seq. LEC. The combined effect of Art. 13 LCD and Arts. 9-12 Ley 1/2019 allows holders to articulate actions on either the unfair-competition or the trade-secret basis, or on both cumulatively.

5.3 Key Case Law

Because Spanish case law reported under the Legal Data Hunter database for trade secret matters is at present limited to the Tribunal Constitucional, the following decisions illustrate the constitutional framework within which commercial courts apply Ley 1/2019. STC 37/1989, de 15 de febrero established that the right to personal and business intimacy protected by Art. 18 of the Spanish Constitution extends to information whose confidentiality has economic significance, thereby anchoring the protection of trade secrets in fundamental-rights doctrine. STC 142/1993, de 22 de abril upheld legislation compelling disclosure of certain business information, noting that restrictions on business confidentiality are constitutionally permissible when proportionate and when they pursue legitimate aims such as workers' protection. STC 292/2000, de 30 de noviembre clarified the scope of the fundamental right to data protection, establishing principles that bear directly on how commercial courts reconcile trade secret disclosure obligations with privacy and confidentiality interests. STC 186/2000, de 10 de julio addressed the balance between employer control (including through surveillance of employees) and employee rights, a recurring consideration in trade secret cases involving departing employees. STC 241/2012, de 17 de diciembre further delineated the limits of workplace monitoring as a means of protecting confidential business information, setting constitutional parameters that continue to guide the evidentiary side of trade secret litigation.

6. United Kingdom

6.1 Legislative Framework

The United Kingdom implemented Directive 2016/943 through the Trade Secrets (Enforcement, etc.) Regulations 2018 (SI 2018/597), which formally transposed the Directive's substantive provisions into English law with effect from 9 June 2018. The Regulations do not replace the existing common law doctrine of breach of confidence; rather, they operate "in addition to, and not instead of" the rights and remedies available at common law and in equity (see reg. 3). The UK regime therefore represents a hybrid system combining the 2018 Regulations with the long-established equitable doctrine of breach of confidence, whose modern formulation derives from **Coco v A.N. Clark (Engineers) Ltd [1969] RPC 41** and Attorney-General v Guardian Newspapers (No 2) [1990] 1 AC 109 (Spycatcher). The Regulations were enacted under section 2(2) of the European Communities Act 1972 and remain in force as retained EU law following the UK's withdrawal from the European Union.

The definitional core of the 2018 Regulations is in reg. 2, which transposes verbatim the Directive's definition of a "trade secret" (information that is secret in the sense of not being generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question; that has commercial value because it is secret; and that has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret), and of related concepts such as "trade secret holder", "infringer" and "infringing goods". Reg. 3 makes clear the cumulative nature of statutory and equitable protection — so that breach of confidence, contract, fiduciary duty and tort remain fully available alongside the new statutory cause of action — and Part 2 of the Regulations then overlays the Directive's specific limitation, confidentiality and remedial provisions. Reg. 4 sets a six-year limitation period for proceedings for "the unlawful acquisition, use or disclosure of a trade secret" running from the day on which the breach occurred or, where later, the day on which the holder knew (or ought to have known) of the breach, with an overriding long-stop of six years.

6.2 Remedies

The remedial architecture of SI 2018/597 is set out in Part 3 (regs. 10 to 18). Under reg. 10, the court must apply the general principle that measures, procedures and remedies must be fair and equitable, proportionate, effective and dissuasive, and must avoid the creation of barriers to legitimate trade; it must also specifically consider the value and nature of the trade secret, the steps taken to protect it, the conduct of the infringer, the impact of the measures on the parties and on third parties, and the legitimate interests of the public. Reg. 11 (preservation of confidentiality) empowers the court to restrict access to documents, limit attendance at hearings, redact judgments and create confidentiality clubs. Reg. 12 authorises the court to order provisional and precautionary measures, including interim injunctions to prevent the use or disclosure of the trade secret, prohibition on the production, offering, placing on the market or use of infringing goods, and seizure or delivery up of suspected infringing goods; reg. 13 requires the court to ensure proportionality of those interim measures (including the possibility of ordering security), and reg. 14 governs compensation where interim measures are revoked or found to be unfounded. Reg. 15 sets out final injunctions and corrective measures, including the cessation or prohibition of use or disclosure, prohibition of production and marketing of infringing goods, and the recall, deprivation of infringing character, destruction or delivery up to the holder of any infringing goods or materials. Reg. 16 requires proportionality to be observed in ordering these final measures, and permits the court, in lieu of corrective measures, to award pecuniary compensation where the conditions of reg. 16(3) are met. Reg. 17 codifies the damages regime: in setting damages the court must take account of all appropriate factors, including the negative economic consequences suffered by the holder (lost profits), any unfair profits made by the infringer and, where appropriate, non-economic factors such as moral prejudice; as an alternative, the court may set damages as a lump sum on the basis of the hypothetical royalty that would have been due had the infringer sought a licence. Reg. 18 empowers the court to order publication of the decision at the infringer's expense, subject to safeguards for personal data and for the trade secret itself. These statutory measures operate alongside the traditional equitable arsenal of English law, most importantly final and interim injunctions (including the sophisticated "springboard" injunction first articulated in Terrapin Ltd v Builders' Supply Co (Hayes) Ltd [1960] RPC 128), freezing injunctions, Norwich Pharmacal orders, search orders (Anton Piller) and the remedy of account of profits.

6.3 Key Case Law

English jurisprudence on trade secrets and breach of confidence is one of the most extensive and authoritative bodies of case law in this field. The foundational modern authority is **Coco v A.N. Clark (Engineers) Ltd [1969] RPC 41**, whose three-part test (information of a confidential character; communicated in circumstances importing an obligation of confidence; and unauthorised use to the detriment of the confider) continues to govern the equitable action for breach of confidence. Of first importance at the highest level is Vestergaard Frandsen A/S v Bestnet Europe Ltd [2013] UKSC 31, in which the Supreme Court (Lord Neuberger) held that an employee who had neither acquired nor knowingly used confidential trade secrets could not be liable in equity merely by virtue of her association with infringers, thereby sharpening the requirement of knowing receipt or use; the earlier first-instance and Court of Appeal decisions in the same litigation — [2009] EWHC 1456 (Ch) (Arnold J) and [2013] EWCA Civ 428 — remain leading authorities on the measure of damages (hypothetical royalty / "user principle") and on springboard relief for misuse of technical information. Celgard, LLC v Shenzhen Senior Technology Material Co Ltd [2020] EWCA Civ 1293 is the leading post-Brexit Court of Appeal authority expressly applying the 2018 Regulations (and the pre-existing common law of confidence) to the grant of an interim injunction against a foreign defendant, confirming that the statutory and equitable routes are concurrent and that jurisdiction can be established where the tortious damage occurs in England. Trailfinders Ltd v Travel Counsellors Ltd [2020] EWHC 591 (IPEC) (and the Court of Appeal decision [2021] EWCA Civ 38) considered the liability of a competitor who knowingly receives customer information from departing employees, clarifying the threshold of constructive knowledge required for third-party liability in equity. Dorma UK Ltd v Bateman [2015] EWHC 4142 (QB) illustrates the willingness of the Queen's Bench Division to grant springboard relief in the context of mass employee defection and solicitation of customers, and QBE Management Services (UK) Ltd v Dymoke [2012] EWHC 116 (QB) is a widely cited authority on the scope and duration of springboard injunctions where former employees have used confidential business plans to set up a competing venture. Finally, Illiquidx Ltd v Altana Wealth Ltd [2021] EWHC 647 (Ch) is one of the first substantive High Court judgments to apply the reg. 17 damages framework alongside common-law equitable compensation, confirming that the 2018 Regulations have not displaced the traditional remedial toolkit of the English courts but rather enlarge and complement it.

7. Comparative Analysis

A comparative examination of trade secret protection across the five jurisdictions studied in this report reveals both substantial convergence and significant divergences. The convergence reflects the harmonizing effect of Directive 2016/943, which established common substantive standards for defining trade secrets and distinguishing lawful from unlawful conduct. However, the transposition of these standards into diverse national legal systems, each with distinct procedural traditions, remedial philosophies, and constitutional frameworks, has resulted in variations in the practical implementation of trade secret protection.

Aspect	France	Germany	Italy	Spain	United Kingdom
Definition Source	Art. L151-1 C.com	GeschGehG § 2	CPI Art. 98	Ley 1/2019 Art. 2	Common law + SI 2018/597
Limitation Period	5 years	3 years (criminal)	Varies by remedy	3 years	6 years (tort)
Primary Remedy	Injunction + damages	Cease & desist + damages	Injunction + damages	Injunction + damages	Injunction + account / damages
Damages Calculation	Lost profits, unjust enrichment, lump sum	Lost profits, royalty, unjust enrichment	Lost profits, royalty, lump sum	Lost profits, royalty, lump sum	Lost profits or account of profits
Criminal Sanctions	No	Up to 5 years' imprisonment	No	No	No
Provisional Measures	Arts. L152-4, R152-1	ZPO §§ 935, 940	Arts. 124–131 CPI	Ley 1/2019 Arts. 9–10, 18	Freezing / search orders
Confidentiality in Proceedings	Arts. L153-1, L153-2 (default)	Limited by press freedom	Court discretion	Protected by default	Court discretion

The comparative table above provides an overview of key remedial characteristics across the five jurisdictions. Several themes emerge from this comparison. First, all five jurisdictions recognize injunctive relief as the primary remedy for trade secret infringement, reflecting the recognition that ongoing misuse of confidential information may cause irreparable harm that cannot adequately be remedied through monetary compensation. Second, all jurisdictions provide for damages awards, though the methodologies for calculating such damages display some variation. The civil law jurisdictions (France, Germany, Italy, Spain) tend to provide statutory frameworks establishing explicit criteria for damages calculation, including consideration of lost profits, unjust enrichment, and reasonable royalties. The United Kingdom, conversely, relies more heavily on judicial discretion and equitable principles in fashioning appropriate remedies, though the substantive approaches often converge with those adopted in the civil law systems.

Third, provisional measures and interim relief occupy a central role in trade secret litigation across all five jurisdictions. The rapidity with which confidential information can be disseminated in the modern digital environment makes preliminary injunctions and other interim relief mechanisms essential to prevent irreparable harm. All five jurisdictions permit courts to grant interim measures on an expedited basis, though procedural mechanisms vary. Fourth, the jurisdictions differ in their approach to criminal sanctions. Germany uniquely establishes criminal liability for trade secret misappropriation, with sentences of up to three years imprisonment for basic violations and up to five years for commercial use or disclosure. The other four jurisdictions do not provide specific criminal penalties for trade secret infringement, though conduct constituting trade secret misappropriation may fall within the scope of broader criminal prohibitions (such as theft, fraud, or breach of fiduciary duty in some circumstances).

Fifth, the jurisdictions display some variation in their approach to confidentiality during proceedings. France explicitly guarantees confidentiality protections through Articles L153-1 and L153-2 of the Code de commerce, establishing a presumption of confidentiality in trade secret litigation. Spain similarly provides for default confidentiality protections. Germany and the United Kingdom permit courts to order confidentiality but do not establish a presumption in favor of such protections, instead balancing trade secret protection against principles of open justice and freedom of expression. Italy grants courts discretion to determine what confidentiality measures are appropriate under the circumstances. Finally, limitation periods for bringing actions display some variation, with France establishing a five-year period, the United Kingdom utilizing the standard six-year limitation period applicable to tort actions, and other jurisdictions employing varying timeframes depending on the legal theory underlying the action.

8. Conclusion

The comparative analysis of trade secret protection regimes across France, Germany, Italy, Spain, and the United Kingdom demonstrates that, despite the harmonizing effect of Directive 2016/943, significant variations persist in how different European jurisdictions implement and apply trade secret law. These variations reflect not deficiencies in the transposition of the Directive, but rather the natural outcome of integrating harmonized substantive standards into diverse legal systems with distinct procedural traditions, remedial philosophies, and constitutional frameworks. The remedial frameworks established in each jurisdiction are substantially equivalent in their practical effect, providing trade secret holders with comprehensive protection through injunctive relief, damages awards, provisional measures, and—in Germany's case—criminal sanctions. The convergence on common definitional standards, the distinction between lawful and unlawful obtaining, and the availability of comparable remedies demonstrates that Directive 2016/943 has successfully harmonized the fundamental aspects of European trade secret law while preserving the flexibility necessary to accommodate national legal traditions. Trade secret holders operating across multiple European jurisdictions can reasonably expect that their confidential information will receive meaningful protection, with access to remedies sufficient to deter infringement and compensate harm. However, successful protection of trade secrets requires proactive engagement with the specific procedural rules, limitation periods, and evidentiary standards applicable in each jurisdiction, as well as awareness of the distinct approaches each system takes to balancing trade secret protection against competing interests such as employee mobility, freedom of expression, and public disclosure.